



# DECISION

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

**Mercy Aged and Community Care Ltd T/A Mercy Health**  
(AG2020/1481)

## **MERCY HEALTH AGED CARE (NSW) NSWNMA & HSU NSW ENTERPRISE AGREEMENT 2019**

Aged care industry

DEPUTY PRESIDENT DEAN

SYDNEY, 15 JUNE 2020

*Application for approval of the Mercy Health Aged Care (NSW) NSWNMA & HSU NSW Enterprise Agreement 2019.*

[1] An application has been made for approval of an enterprise agreement known as the *Mercy Health Aged Care (NSW) NSWNMA & HSU NSW Enterprise Agreement 2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Mercy Aged and Community Care Ltd T/A Mercy Health. The Agreement is a single enterprise agreement.

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

[3] The Australian Nursing and Midwifery Federation and the Health Services Union of Australia, being bargaining representatives for the Agreement, have given notice under s 183 of the Act that they want the Agreement to cover them. In accordance with s 201(2), the Commission notes that the Agreement covers these organisations.

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 22 June 2020. The nominal expiry date of the Agreement is 30 June 2022.

 

DEPUTY PRESIDENT

[2020] FWCA 3133

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30 April 2020



Mercy Health  
*Care first*

**Mercy Health Aged Care (NSW)  
NSWNMA & HSU NSW  
Enterprise Agreement**

**2019**

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## **PART 1 - PRELIMINARIES**

### **1. INTRODUCTION**

This Agreement is made under section 172 of the *Fair Work Act 2009 (Cth)* (**'the Act'**).

- (a) The employer will take the necessary steps to seek approval of this Agreement under section 186 of the Act
- (b) The employer will formally advise the Unions when the Agreement is made in order for the Unions to apply under section 183 of the *Fair Work Act 2009* to be covered by the agreement.
- (c) It is the intention of this Agreement that the Unions will be covered by this Agreement

### **2. TITLE**

This Agreement shall be known as the *Mercy Health Aged Care (NSW) NSWNMA & HSU NSW Enterprise Agreement 2019* and throughout is referred to as "this Agreement".

### **3.1 PARTIES BOUND**

This Agreement shall be binding according to its terms upon the following:

- (a) Mercy Aged and Community Care Ltd. ('Mercy Health') (A.B.N. 77 191 901 062) of Level 2, 12 Shelley Street Richmond in the State of Victoria (**"the Employer"**);
- (b) HSU New South Wales Branch of Level 2, 109 Pitt Street, Sydney in the State of New South Wales (**'the HSU'**);
- (c) the New South Wales Nurses and Midwives' Association of 50 O'Dea Street, Waterloo in the State of New South Wales;
- (d) the Australian Nursing and Midwifery Federation (NSW Branch) of 50 O'Dea Street, Waterloo in the State of New South Wales; and
- (e) and all those employees of the Employer performing work within the classifications contained in this Agreement and employed in the Employer's residential aged care facilities in NSW.

### **3.2 SCOPE OF THE AGREEMENT**

This Agreement contains the terms and conditions of employment for employees as specified in Clause 3.1(e), excluding the Mt St Joseph's Nursing Home employees who are "transferred employees" for the purpose of the Memorandum of Understanding between the Minister for Health for the State of New South Wales, the Health Administration Corporation, Southern Area Health Service, Mercy Care Centre Young Ltd, and the Trustees of the Roman Catholic Church for the Archdiocese of Canberra and Goulburn, dated 1 May 2000.

### **4. COMMENCEMENT**

The Agreement will commence 7 days after the date of approval by Fair Work Commission.

## 5 EXPIRY

This Agreement shall have a nominal expiry date of 30 June 2022. Negotiations to renew and replace this Agreement will commence no later than three months prior to the nominal expiry date.

## 6. DEFINITIONS

The parties to the agreement recognise the requirements of section 55(4) and 55(5) of the *Fair Work Act 2009 (Cth)* in response to the NES.

For the purposes of this Agreement:

**Act** means the *Fair Work Act 2009 (Cth)* (as amended).

**AHPRA** means the Australian Health Practitioner Regulation Agency

**Base rate of pay** (refer to section 16 of the Act) means a rate of pay for a period worked (however the rate is described) 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 of work between 6:00am and 6:00pm Monday to Friday.

**De facto Partner** means:

- (a) a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- (b) includes a former de facto partner of the employee.

**FWC** means Fair Work Commission

**Immediate Family** means:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

**NES** means the National Employment Standards as amended from time to time.

**Ordinary Pay** includes: the base rate of pay and any applicable over-agreement payments for ordinary hours of work. It does not include shift or weekend penalties.

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

**Shiftworker** means an employee who is not a day worker as defined.

**Union** or Unions means HSU-NSW branch; the New South Wales Nurses and Midwives' Association and the Australian Nursing and Midwifery Federation (NSW Branch).

**Work clothing** means any item(s) of clothing purchased and/or worn by an employee for the purpose of performing duties in accordance with their contract of employment and terms contained in this Enterprise Agreement.

## **7. COMPLETE AGREEMENT**

- 7.1 This Agreement is intended to cover all matters pertaining to the employment relationship. In this regard, it represents a complete statement of the mutual rights and obligations between the Employer and the employees to the exclusion (to the extent permitted by law) of other laws, awards, agreements (whether registered or unregistered), custom and practice and like instruments or arrangements.
- 7.2 Notwithstanding clause 7.1 of this Agreement, to the extent an employee's contract of employment with the Employer provides for more favourable terms and conditions of employment, the contract of employment will prevail to the extent of such inconsistency.
- 7.3 For the purposes of this clause, the terms "award" or "awards" include any applicable award or enterprise agreement and includes those howsoever described in the Act as an award, modern award, federal award, transitional federal award, pre-reform federal award, pre-reform certified agreement, a rationalised and/or simplified federal award, a preserved State agreement or a notional agreement preserving a State award.
- 7.4 This Agreement is not intended to exclude any part of the NES or to provide any entitlement which is detrimental to an employee's entitlement under the NES. For the avoidance of doubt, the NES prevails to the extent that any aspect of this Agreement would otherwise be detrimental to an employee.

## **8. AGREEMENT FLEXIBILITY**

- 8.1 Notwithstanding any other provision of this Agreement, an Employer and an individual employee may agree to vary the effect 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 effect of are those concerning:
- (a) One or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - (b) the arrangement meets the genuine needs of the Employer and employee in relation to one or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the Employer and employee.
- 8.2 The Employer must ensure that the terms of the individual flexibility arrangement;
- (a) are about permitted matters under section 172 of the *Fair Work Act 2009*; and
  - (b) are not unlawful terms under section 194 of the *Fair Work Act 2009*; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 8.3 The Employer must ensure that the individual flexibility arrangement:
- (a) is in writing; and



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

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

8.5 The Employer and employee may terminate the individual flexibility arrangement:

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

## **9. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS**

9.1 In addition to the individual flexibility agreements described in clause 8 of this Agreement, an employee may request a change in their working arrangements if they require flexibility because they:

- (a) are the parent, or have responsibility for the care of a child who is of school age or younger
- (b) are a carer (within the meaning of the *Carer Recognition Act 2010*)
- (c) have a disability
- (d) are 55 or older
- (e) are experiencing violence from a member of their family; or
- (f) provide care or support to a member of their immediate family or household, who requires care or support because they are experiencing violence from their family.

9.2 The employee is not entitled to make the request unless:

- (a) for an employee other than a casual employee, the employee has completed at least 12 months of continuous service with the Employer immediately before making the request; or
- (b) for a casual employee, the employee:
  - (i) is a long term casual employee of the Employer immediately before making the request; and

- (ii) has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

9.3 The request must:

- (a) be in writing; and
- (b) set out details of the change sought and of the reasons for the change.

9.4 The Employer must give the employee a written response to the request within 21 days, stating whether the Employer grants or refuses the request.

## **10. NO EXTRA CLAIMS**

10.1 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.

10.2 Where any disagreement arises, the parties shall follow the Dispute Settlement Procedure contained in this Agreement. The parties acknowledge that the terms of this Agreement represent the totality of all matters in the employment relationship and that no industrial action shall be taken in support of any matter(s) whatsoever which is (are) covered or not covered by this Agreement until its nominal expiry date has passed and the requirements of the Act have been satisfied.

10.3 Subject to the consultation provisions contained in clause 30 of this Agreement, it is not the intent of this provision to inhibit, limit or restrict the Employer's right or ability to introduce change at the workplace.

## **11. RELATIONSHIP TO POLICIES AND PROCEDURES**

From time to time the Employer may implement policies and procedures prescribing the manner in which employees perform their duties. This Agreement does not (unless expressly referenced as at clause 28 Domestic or Family Violence Leave) incorporate or otherwise include as terms of this Agreement any such policy or procedure and does not affect the Employer's ability to vary, revoke or establish any such policy or procedure from time to time.

## **12. AVAILABILITY OF AGREEMENT**

The Employer must ensure that copies of this Agreement and the NES are available to all employees to whom they apply either on a notice board which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

## **PART 2 - ENGAGEMENT**

### **13. EMPLOYMENT RELATIONSHIP**

#### **13.1 Engagement**

- (a) The Employer must write to each employee at the time of their engagement stating their terms of engagement and in particular whether they are a full-time, part-time, casual or fixed term employee.
- (b) The Employer may direct the Employee to carry out such duties that are within the limits of the Employee's skill, competence and training.

### **13.2 Employment Screening**

- (a) The employee will participate in all relevant employment screening required to be undertaken by the Employer in accordance with the Employer's policies and at law, including National Criminal History Record Checks.
- (b) The employee is responsible for meeting the costs associated with employment screening and ongoing costs associated with National Criminal History Record Checks. The employee is to retain the original documentation.

### **13.3 Full-time Employees**

- (a) A full-time employee is one engaged as such and whose ordinary hours of work average 38 hours per week.

### **13.4 Part-time Employees**

- (a) A part-time employee is an employee who is engaged to work less than an average of 38 ordinary hours per week and whose hours of work are reasonably predictable.
- (b) Before commencing part-time employment, the Employer and employee will agree in writing the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours. The guaranteed minimum number of hours to be worked may be varied by agreement between the Employer and the employee in writing.
- (c) Nothing in this clause shall limit the ability of a part time employee to agree to work additional shifts on days they would not otherwise be rostered at ordinary rates, save for any other limits prescribed by this agreement.
- (d) **Review of Part-time Hours:** At the request of an employee, the hours worked by the employee will be reviewed six monthly. Where the employee is regularly working more than their guaranteed minimum number of hours then such hours shall be adjusted by the employer, and recorded in writing to reflect the hours regularly worked. The hours worked in the following circumstances will not be incorporated in the adjustment:
  - (i) if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, parental leave, workers compensation; and
  - (ii) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident.
- (e) Any adjusted guaranteed minimum number of hours resulting from a review identified in sub-clause 13.4(d) should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

### **13.5 Fixed Term Employees**

A fixed term employee is one who is engaged for a set period to perform a specific task or complete a specific project. The ordinary hours of work for a fixed term employee shall be determined by the Employer prior to the commencement of employment.

### **13.6 Casual Employees:**

- (a) A casual employee is one who is engaged as such on an hourly basis otherwise than as a full-time employee or a part-time employee.
- (b) Casual Conversion

- (i) A casual employee who 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 generally be on the basis of the same number of hours as previously worked, however the hours must be capable of fitting within the existing shift and rostering arrangements. Other arrangements may be implemented by agreement between the employer and the employee.
- (ii) The employer may consent to or refuse the request, but shall not unreasonably withhold agreement to such a request.
- (iii) Casual conversion will not apply where a casual has covered absences of permanent staff that are expected to return to work

### **13.7 Employment Classifications**

- (a) Nursing classification definitions are outlined in *Schedule 1 - Nursing Classification Definitions*.
- (b) Aged Care classification definitions are outlined in *Schedule 2 - Aged Care Classification Definitions*.
- (c) Where classification levels are divided into increments, Employees may progress through these increments upon meeting the criteria.
- (d) The Employer must advise Employees in writing of their employment classification at the start of their employment or upon appointment to a different employment classification.

### **13.8 Progression (Nursing classifications)**

Progression for all classifications for which there is more than one pay point will be by annual movement to the next pay point, or in the case of a part-time or casual employee 1786 hours of experience.

## **14. PAY AND PAYMENT**

### **14.1 Full-Time and Part-Time Employees**

- (a) The base rates of pay in the appropriate employment classification for full-time employees and for part-time employees shall be the hourly rates of pay set out in Schedule 3 to this Agreement.

### **14.2 Casual Employees**

- (a) The base rates of pay in the appropriate employment classification for casual employees shall be the hourly rates of pay set out in Schedule 3 to this Agreement. In addition, a casual loading of 25% will be paid.
- (b) Casual loading will be paid in accordance with clauses: 18 (Overtime); and Shift and Weekend Work 19.2 & 19.3.

### **14.3 Payment of Wages**

- (a) Wages shall be paid fortnightly in arrears.

- (b) Employees shall have their wages paid by direct deposit or electronic transfer into one account with a bank or other financial institution as nominated by the employee. Wages shall be deposited by the employer in sufficient time to ensure that wages are available for withdrawal by employees by the close of business on pay day. Where the wages are not available to the employee by such time due to circumstances beyond the employer's control, the employer shall not be held accountable for such delay.
- (c) Where the Employer has overpaid an employee, the employer shall notify the employee in writing of such overpayment and how such overpayment is made up, and may recover such amounts, with the agreement of the employee as to the amount of the overpayment and method of such recovery. This clause authorises the use of deductions from wages for the purpose of such recovery, provided that all such deduction from wages must be authorised in writing by the employee. A repayment plan will be agreed by the employer and take into consideration any such financial hardship experienced by the employee.

#### **14.4 Particulars of Wages**

On pay day each employee shall be provided with a pay slip in electronic form or hardcopy which complies with the relevant provisions of the Act.

#### **14.5 Late Payment of Wages**

- (a) Where an underpayment of wages occurs by reason of an error in calculation by the Employer involving 2.5% or more of the employee's net weekly wage, the payment will be corrected within 24 hours at the request of the employee.
- (b) This shall not apply where the Employer and employee are in genuine dispute as to whether the monies are owed to the employee.

#### **14.6 Wage Increases**

- (a) Wage increases for the life of the Agreement are listed in Schedule 3 Pay Rates.
- (b) Allowances will be increased as listed in Schedule 4 Allowances.
- (c) Any increases in rates of pay by the FWC (or any other industrial body or tribunal) effective prior to or during the term of this Agreement may be absorbed into the salary increases set out above.
- (d) Any employee whose current salary is above the rate scheduled in this agreement will remain on the higher rate of pay. Future pay increases will be absorbed until the rate of pay for the employee's classification meets and/or succeeds this higher rate of pay, unless otherwise determined by the Employer in accordance with the employee's contract of employment.

#### **14.7 Salary Packaging**

- (a) By agreement with the employee, an employee's rate of pay (specified in this Agreement), may be salary packaged.
- (b) The employee shall compensate the Employer from within their base remuneration for any fringe benefits tax ('FBT') incurred as a consequence of any salary packaging arrangement the employee has entered into. Where the employee chooses not to pay any of the costs associated with their salary packaging, the Employer may cease the employee's salary packaging arrangements.
- (c) The parties agree that in the event that salary packaging ceases to be an advantage to the employee (including as a result of subsequent changes to FBT legislation), the employee may

elect to convert the amount packaged to salary. Any costs associated with the conversion to salary shall be borne by the employee and the employer shall not be liable to make up any benefit lost as a consequence of an employee's decision to convert to salary.

- (d) The employee shall be responsible for all costs associated with the administration of their salary packaging arrangements, provided that such costs shall be confined to reasonable commercial charges as levied directly by the external salary packaging provider and/or in-house payroll service (as applicable), as varied from time to time.
- (e) The parties recommend to employees who are considering salary packaging that they seek independent financial advice. The Employer shall not be held responsible in any way for the cost or outcome of any such advice and furthermore, the parties agree that the employee shall pay for any costs associated with salary packaging.
- (f) Superannuation contributions paid by the Employer into an approved Fund will be calculated on the employee's pre-packaged rate of pay.

#### 14.8 Superannuation

- (a) The Employer will make superannuation contributions to a MySuper compliant superannuation fund nominated by the employee in accordance with the Superannuation Guarantee (SG) legislation as varied from time to time.
- (b) The Employer shall make occupational superannuation contributions to the Fund. 'The Fund' for the purpose of this Agreement shall mean:
  - (i) First State Super, or
  - (ii) Catholic Super, or
  - (iii) Any other complying fund-upon a request from the Employee in accordance with clause 14.8(a).
- (c) Should an employee fail to nominate a fund, the Employer will make superannuation contributions into the Employer's default fund, being Catholic Super.
- (d) Where an employee wishes to make voluntary contributions to the Fund, the employee may authorise the Employer to deduct from the employee's wages an amount or percentage specified by the employee. Voluntary contributions deducted under this provision will be forwarded to the fund by the Employer at the same time as the Employer's contributions. Where the Employer receives written authorisation from an employee, it must commence making payments into the fund on behalf of the employee within fourteen days of receiving the authorisation.
- (e) An employee may vary his or her additional contributions by a written authorisation and the Employer must alter the additional contributions within fourteen days of receiving the authorisation. An employee may only vary his or her additional contributions once each month.
- (f) An employee may make an agreement with the Employer for salary sacrifice.
  - i The employee must specify an amount or percentage of ordinary time earnings by which his or her salary is to be reduced.
  - ii The salary sacrifice will be deducted from the employee's salary and contributed by the Employer to the Fund each month.
  - iii The Employer will continue to calculate the contributions required by clause 14.8(a) above and the *Superannuation Guarantee (Administration) Act 1992* on the basis of the employee's ordinary time earnings before the salary sacrifice is deducted.



- iv Salary sacrifice deductions will be made during a period of paid leave and the employee will receive the rate of pay specified under this Agreement less the salary sacrifice deduction.
  - v Calculation of salary for the purpose of leave accruals and other payments due on termination of employment shall be calculated on a rate of pay which includes the salary sacrifice contributions.
  - vi The employee may revoke the salary sacrifice agreement or alter the amount to be deducted up to four times in each calendar year.
- (g) The name of the fund and the amount of any superannuation guarantee contributions or voluntary contributions must be included in pay slips provided by the Employer to each employee.

## **15. HOURS**

### **15.1 Ordinary Hours of Work**

- (a) The ordinary hours of work for employees will be:
  - i. 38 hours per week; or,
  - ii. an average of 38 hours per week worked over a 76 hour fortnight; or,
  - iii. 152 hours per 4 week period.
- (b) The shift length or ordinary hours of work per day will be a maximum of 8 hours exclusive of meal breaks for Aged Care classification employees or 10 hours for those Aged Care classification employees on night shift. For Nursing classification employees, the shift length or ordinary hours of work will be a maximum of 10 hours exclusive of meal breaks.
- (c) The hours of work on any day will be continuous except for meal breaks.

### **15.2 Arrangement of Hours**

- (a) Each employee shall be entitled to not less than 4 full days in each fortnight free from duty or 2 full days in each week free from duty (rostered days off), and every effort shall be made for such rostered days off to be consecutive, unless otherwise agreed. For the purpose of this sub-clause for a Nursing classification as defined in Schedule 1 of this Agreement, duty includes time an employee is on call.
- (b) Each shift shall consist of no more than the ordinary hours of work prescribed by clause 15.1(b) of this Agreement at ordinary time provided that an employee shall not work more than seven consecutive shifts unless the employee so requests and the Employer agrees.
- (c) Each employee shall be allowed a rest break of ten hours between the completion of one ordinary work period or shift and the commencement of another work period or shift. By mutual agreement, the ten hour rest break may be reduced to eight hours.

### **15.3 Span of Hours**

- (a) The ordinary hours of work for a day worker will be between 6.00am and 6.00pm Monday to Friday.
- (b) A shiftworker is an employee who is regularly rostered to work their ordinary hours of work outside the ordinary hours of work of a day worker as defined in clause 15.3(a) above.

#### **15.4 Minimum Hours**

- (a) Full-Time employees will receive a minimum payment of four hours at the employee's ordinary rate of pay for each start in respect of ordinary hours of work.
- (b) Part-Time and Casual employees will receive a minimum payment of two hours at the employee's ordinary rate of pay for each start in respect of ordinary hours of work.
- (c) The Employer will ensure there is provision for handover between staff where required at the commencement of each shift to inform of any changes to a resident's health status.

#### **15.5 Broken Shifts (Aged Care Classifications Only)**

- (a) A "broken shift" means a single shift worked by a casual or part-time Aged Care classification employee that includes one or more breaks (other than a meal break) totalling not more than 4 hours.
- (b) The time between the commencement and termination of the broken shift must not exceed 12 hours.
- (c) Payment for a broken shift shall be at ordinary pay with penalty rates and shift allowances in accordance with Clause 19, with shift allowances being determined by the commencing time of the broken shift. In addition, where a broken shift is worked, an employee shall receive an allowance equivalent to half an hour of their ordinary pay per shift
- (d) All work performed beyond the maximum span of 12 hours will be paid at double time.
- (e) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

#### **16. ROSTERS**

- (a) The ordinary hours of work for each employee shall be displayed on a roster in a place conveniently accessible to employees. Such roster shall be displayed two weeks prior to the commencing date of the first working period in any roster.
- (b) Sub-clause (a) shall not make it obligatory for the employer to display any roster of ordinary hours of work of casual or relieving staff.
- (c) Unless the Employer otherwise agrees, an employee desiring a roster change will give 7 days' notice except where the change is a result of the employee being ill or in the event of an emergency. Such a request is not considered approved until the employee has received notification from the Employer confirming such.
- (d) 7 days' notice of a change of roster will be given by the Employer to an employee (other than casuals) provided that a roster may be altered at any time so as to enable the service of the organisation to be carried on where another employee is absent from duty on account of Ceremonial leave, Personal/Carers leave, Compassionate leave and leave to deal with Family and Domestic Violence or in an emergency. Where such alteration involves an employee working on a day which would have been his or her rostered day off, the day off instead will be as mutually arranged.
- (e) Sub-clause (d) 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.



## **17. BREAKS**

(a) Employees are entitled to a paid rest break each working day as follows:

- i. one 10 minute break where the employee works less than 7.6 hours; or,
- ii. two 10 minute breaks, which may be taken as one 20 minute break if agreed by the Employer or employee, where the employee works 7.6 hours or more.

A paid rest break will count as working time.

(b) Employees are entitled to an unpaid meal break each working day as follows:

- i. between 30 minutes and 60 minutes where the employee's shift is 10 hours or less; or,
- ii. two 30 minute breaks, or one 60 minute break (if agreed by the Employer), where the employee's shift is more than 10 hours.

(c) Employees must not be required to work more than five hours continuously before taking the meal break. An unpaid meal break will not count as time worked. Nursing classifications shall take the meal break between the fourth and sixth hour after beginning the shift, where reasonably practicable.

(d) Where a nursing classification employee is required by the employer to remain available during a meal break, but is free from duty, the employee will be paid at ordinary rates for a 30 minute meal break. This period will not count as time worked when calculating ordinary hours for the purposes of overtime or penalties. If the employee is recalled to perform duty during this period the employee will be paid overtime for all time worked until the balance of the meal break is taken.

(e) Where an Aged Care classification employee is required to remain available to attend to duty or is on duty during their meal break, the employee will be paid at overtime rates for all time worked from the commencement of that meal break until such time that a meal break free from duty is taken by the employee or the employee's shift ends (whichever occurs first). Whilst payment will be calculated at overtime rates, the time worked until the meal break is taken will be regarded and count as an employee's ordinary time.

(f) The Employer shall provide access to suitable facilities for employees who are breastfeeding to enable them to express or feed children while at work.

## **18. OVERTIME**

18.1 The employer may request an employee to work reasonable overtime in accordance with the provisions of the NES.

18.2 All time worked by employees outside the ordinary hours in accordance with Clause 15 shall be paid at the base rate of pay in accordance with the following:

- (a) Nursing classification employees, Monday to Saturday - Overtime shall be paid time and one half up to 2 hours each day and thereafter double time;
- (b) Aged Care classification employees, Monday to Friday - Overtime shall be paid time and one half up to 2 hours each day and thereafter double time; Saturday - Overtime shall be paid at double time;
- (c) All classifications, Sunday - Overtime shall be paid at double time;

- (d) All classifications, Public Holidays - Overtime shall be paid double time and one-half;
  - (e) Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend penalties prescribed in clause 19.
  - (f) In addition to applicable overtime rates under this clause casual employees will also be entitled to the casual loading in clause 14.2(a) paid as follows:
    - (i) Casual Aged Care employees – overtime rates will be calculated on their base rate of pay; and
    - (ii) Casual Nursing employees’ overtime rates will be calculated on their casually loaded rate of pay.
  - (g) Overtime penalties do not apply to the Deputy Director of Nursing or the Director of Nursing. Instead, the Deputy Director of Nursing or the Director of Nursing will be paid in accordance with their contract of employment for all overtime worked.
- 18.3 An employee must be granted a break of 10 hours where overtime is worked or where broken shifts (by an Aged Care classification employee only) are worked on successive days.
- 18.4 Where the next shift is due to commence before the employee (other than a casual) has had their 10 hour break, one of the following will apply:
- (a) The employee will be released prior to, or after the completion of their shift to permit them to have their break without loss of pay for the working time occurring during such absence.
  - (b) If at the request of the employer an employee works without their break, they shall be paid until they are released from duty at double time. Once released from duty such employees shall be entitled to be absent from work until they have had their break without loss of pay for working time occurring during such an absence.
- 18.5 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 4 hours at the applicable overtime rate for each time so recalled. Provided that, except in unforeseen circumstances, an employee shall not be required to work the full 4 hours if the tasks they were recalled to perform are completed within a shorter period.
- 18.6 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 Item 3 Schedule 4 to this Agreement.
- 18.7 An employee required to work overtime for more than 4 hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent 4 hours overtime. All such time will be counted as time worked.
- 18.8 An employee required to work overtime of more than 1 hour will be entitled to be paid a meal allowance in the amount set out in Schedule 4. Where such overtime exceeds 4 hours, a further meal allowance in the amount set out in Schedule 4 shall be paid.
- 18.9 For the purposes of assessing overtime, each day shall stand alone, provided that where any one 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.
- 18.10 All time worked by part-time and casual employees in excess of 38 hours per week or 10 hours per day shall be paid for at overtime rates. Part-time employees required to work more than their agreed rostered hours will also be entitled to overtime rates provided the Employer and the employee have not firstly entered into an agreement to vary the part-time employee's hours of work.

## **19. SHIFT AND WEEKEND WORK**

19.1 Where an employee works hours which would entitle that employee to payment for more than one of the allowances payable in accordance with the overtime, public holidays, shift and weekend work provisions in this Agreement, only the highest of any such allowance will be payable.

### **19.2 Nurse Classification and Aged Care Classifications**

- (a) Employees employed in the Nurse Classifications and Aged Care Classifications in Schedule 1 and 2 to this Agreement shall be paid the following penalties, calculated on their ordinary pay, for shifts rostered as follows:
  - i. 10% for afternoon shift commencing after 10:00 a.m. and before 1:00 p.m.
  - ii. 12.5% for afternoon shift commencing at or after 1:00 p.m. and before 4:00 p.m.
  - iii. 15% for night shift commencing at or after 4:00 p.m. and before 4:00 a.m.
  - iv. 10% for night shift commencing at or after 4:00 a.m. and before 6:00 a.m.
- (b) The shift penalties do not apply to a Deputy Director of Nursing or a Director of Nursing. Instead, a Deputy Director of Nursing and a Director of Nursing will be paid in accordance with their contract of employment for all shift work.
- (c) In addition to applicable shift penalties, casual employees will also be entitled to the casual loading calculated on their base rate of pay.

### **19.3 Saturday and Sunday work**

- (a) Full-time, part-time and casual employees shall be paid the following penalties for ordinary hours of work occurring on a Saturday or a Sunday:
  - i. for work between midnight on Friday and midnight on Saturday - time and one half.
  - ii. for work between midnight on Saturday and midnight on Sunday - time and three-quarters.

For Aged Care classifications these weekend penalties shall be in substitution for and not cumulative upon the casual loading prescribed in clause 14.2(a) and the shift penalties prescribed in clause 19.2.

For nursing classifications the weekend penalties will be in addition to the casual loading prescribed in clause 14.2(a) calculated on their casually loaded rate of pay. For nursing classifications the weekend penalties will be in substitution for and not cumulative upon the shift penalties prescribed in clause 19.2.

## **20. PUBLIC HOLIDAYS**

- 20.1 The parties acknowledge that the nature of the work performed by the employee, the type of employment and the nature of the Employer's workplace will require work on public holidays, or particular public holidays.
- 20.2 Ordinarily, an employee, excluding a casual employee, is entitled to a day off on a public holiday. However, The Employer may request an employee to work on a particular public holiday.

- 20.3 The employee may refuse the request (and take the day off) if the employee has reasonable grounds for doing so. 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 section 114 of the Act.
- 20.4 Public holidays shall be allowed to full-time and part-time employees without loss of ordinary pay provided that part-time employees will only be entitled to payment for those public holidays that fall on days they are normally rostered to work
- 20.5 (a) For the purposes of this Agreement, the following shall be deemed to be public holidays:
- (i) New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Sunday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day.
  - (ii) If, under (or in accordance with a procedure under) a law of New South Wales, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of clause 20.5(a)(i), then the substituted day or part-day is the public holiday.
- (b) Any other day duly proclaimed and observed as a public holiday within the area in which the facility is situated shall also be deemed to be a public holiday for the purpose of this Agreement. Notwithstanding if the local day is a half day a full day will be observed as a public holiday. This day is usually observed between Christmas and New Year, within the days Monday to Friday inclusive and not on a date that is already a public holiday.
- (c) The Employer and employees may agree to substitute another day for a public holiday.
- 20.6 An employee who is required to and does work on any public holiday prescribed in this clause shall be paid at the rate of double time and a half. The payment of this public holiday penalty shall be in lieu of all other shift penalties, weekend penalties and casual loadings (except broken shift allowances).

## **21. ALLOWANCES**

### **21.1 Vehicle/Travelling Allowance**

- (a) Where an employee is required and authorised to use his or her private vehicle in the course of their duties, the employee shall be paid the per kilometre allowance set out in Schedule 4 to this Agreement excluding travel to and from the employee's home.
- (b) Where an employee is required to use public transport for work-related travel, the employee shall be reimbursed for actual expenses reasonably incurred for such travel, provided that such expenses have first been approved by the Employer in writing.

### **21.2 Uniforms Allowance**

- (a) Subject to clause 21.2(c) of this Agreement uniforms shall be supplied free of cost, to each employee required to wear them.
- (b) Upon termination, an employee shall return any uniform or part thereof supplied by the organisation, which is still in use by the employee, immediately prior to leaving.
- (c) In lieu of supplying a uniform where required to an employee, the Employer shall pay the employee the weekly allowance set out in Schedule 4 to this Agreement.
- (e) An employee who works less than 38 hours per week shall be entitled to the allowance prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

(f) Uniform allowance will not be paid to employees during absences on:

- (i) Workers Compensation; Long Service Leave and periods of leave without pay; and
- (ii) Personal/Carer's leave beyond 3 weeks.

### **21.3 Laundry Allowance**

- (a) Employees shall receive a laundry allowance for laundering work clothing.
- (b) The Employer shall pay an employee that works 38 hours per week the weekly allowance set out in Schedule 4 to this Agreement.
- (c) An employee who works less than 38 hours per week shall be paid the per hour allowance set out in Schedule 4 of this Agreement capped at the weekly allowance.
- (d) Laundry allowance shall not be paid to any employee during any period of leave including:
  - (i) Workers Compensation; Long Service Leave and periods of leave without pay; and
  - (ii) Personal/Carer's leave beyond 3 weeks.

### **21.4 On Call Allowance**

- (a) An employee who is required to remain on call, that is, 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 Schedule 4 to this Agreement.
- (b) Where an employee on call in accordance with clause 21.4(a) of this Agreement, leaves the Employer's premises and is recalled to duty, she or he shall be reimbursed all reasonable fares and expenses actually incurred in returning to the Employer's premises. 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 Schedule 4 to this Agreement.
- (c) This clause shall not apply to a Deputy Director of Nursing or a Director of Nursing.

### **21.5 Higher Duties**

- (a) An employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification shall be entitled to receive for the period of relief, or the period during which he or she so acts, the minimum payment for such higher classification.
- (b) The provisions of clause 21.5(a) of this Agreement shall not apply where the employee of the higher classification is off duty by reason of his/her additional day off duty as a consequence of working a 38 hour week.
- (c) For nursing classifications, the provisions of clause 21.5(a) of this Agreement shall not apply where the employee of the higher classification is off duty for a period of 3 working days or less.
- (d) For Aged Care classifications, the provisions of clause 21.5(a) of this Agreement shall apply for the time worked for two hours or less; or a full day or shift where the time worked exceeds two hours.
- (e) This clause shall not apply to a Deputy Director of Nursing or a Director of Nursing.



#### **21.6 Medication Allowance**

Where an enrolled nurse (EEN) classification is rostered to a position that includes the administration of medication the employee shall be paid the allowance, set out in Schedule 4 to this Agreement. Payment shall be on a shift by shift basis.

#### **21.7 Tool allowance**

A tool allowance as set out in Schedule 4 for the supply and maintenance of tools will be paid to chefs and cooks who are not provided with all necessary tools by the Employer.

#### **21.8 Qualifications Allowance – Registered Nurse**

A Registered Nurse will be entitled to a qualification allowance set out below, subject to the following:

- (a) A Registered Nurse holding more than one qualification is only entitled to one qualification allowance, being the allowance for the highest qualification held. It must be demonstrated that the qualification is relevant to residential aged care, specifically one of the following areas:

Gerontological nursing, or  
Management, or  
Other qualification with a component that has application to nursing in Aged Care.

In the case of qualifications regarding Management, such qualifications will be deemed relevant where the employee is classified as a (Clinical Care Coordinator) or above.

- (b) In considering whether a component of the qualification is relevant, the nature of the qualification and the current area of practice of the qualification holder are the main criteria. Other considerations may include:
- the clinical or other area of work of the Registered Nurse;
  - the classification and position description of the Registered Nurse;
  - whether the qualification would assist the Registered Nurse in performing her or his role and/or assist in maintaining quality patient care and/or assist in the administration of the unit/area in which the Registered Nurse is employed.
- (c) A Registered Nurse claiming entitlement to a qualification allowance must provide to the Employer evidence of that Registered Nurse holding the qualification for which the entitlement is claimed. Payment shall be from the first pay period on or after evidence of the qualification is submitted to the Employer.
- (d) For the avoidance of doubt, a qualification allowance cannot be claimed by a Registered Nurse in respect of that Employee's base qualification leading to registration as a Registered Nurse with the exception of:
- An Honours degree
  - A Masters degree
  - A Doctorate

- (e) Certificates obtained from training or education facilities shall be recognised provided that the programmes are equivalent to a University/Graduation certificate and the training/education facility verifies that in writing.
- (f) A Registered Nurse who holds a Hospital Certificate or Graduate Certificate (or equivalent) shall be paid, in addition to their salary, 4.0% of base rate.
- (g) A Registered Nurse who holds a Post-Graduate Diploma or a Degree (or equivalent) (other than a nursing undergraduate degree), an honours degree or a double degree, shall be paid, in addition to her or his salary, 6.5% of base rate.
- (h) A Registered Nurse who holds a Masters (including a Masters degree completed prior to, or that leads to registration), shall be paid, in addition to their salary, 7.5% of base rate.
- (i) A Registered Nurse who holds a Doctorate, shall be paid, in addition to their salary, 8.5% of base rate.
- (j) The above allowances are to be paid during all periods of leave except sick leave beyond 21 days in any twelve month period and long service leave.
- (k) The allowance is to be paid on a pro-rata basis for non-full-time Employees, including casuals.

### **PART 3 - LEAVE**

#### **22. ANNUAL LEAVE**

22.1 Casual employees have no entitlement to annual leave.

#### **22.2 Accrual of Annual Leave**

- (a) Aged Care classification employees, other than shift workers, are entitled to 4 weeks' paid annual leave per annum.
- (b) Aged Care classification employees who are employed as shift workers are entitled to 1 week of annual leave per annum in addition to the annual leave prescribed by clause 22.2(a) of this Agreement.
- (c) Nursing classification employees, other than shift workers are entitled to 5 weeks' paid annual leave per annum.
- (d) Nursing classification employees who are employed as shift workers are entitled to 1 week of annual leave per annum in addition to the annual leave prescribed by clause 22.2(c) of this Agreement.
- (e) For the purposes of this Agreement a shift worker is defined as:
  - (i) an employee who is regularly rostered to work their ordinary hours outside Monday to Friday, 6am to 6pm; and/or
  - (ii) an employee who works for more than 4 ordinary hours on 10 or more weekends.
- (f) For the purpose of the clause 22.2(e)(ii), a weekend means work in ordinary time on a Saturday and/or a Sunday in any one calendar week.
- (g) The entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

### 22.3 Payment of Annual Leave

- (a) If an employee takes annual leave during a period, the annual leave shall be paid at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) An Employee going on leave may elect to be paid:
  - (i) prior to commencing such leave; or
  - (ii) through their normal pay cycle.
- (c) Once the leave has commenced the election cannot be changed unless the Employer agrees.
- (d) If the employment of an employee who has not taken an amount of accrued annual leave ends at a particular time, the employee's untaken accrued annual leave shall be paid at the employee's ordinary pay at that time.
- (e) Annual leave loading, if any, shall be paid in accordance with clause 22.6.

### 22.4 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 at least 28 days' notice of the desired period of such leave. The Employer may, at its discretion, accept a shorter period of notice. The Employer will respond to the employee's written request for leave within 14 days.
- (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) **Extensive accumulated annual leave:** An employee must take an amount of annual leave during a particular period if:
  - (i) reasonably directed to do so by the Employer; and
  - (ii) at the time the direction is given, the employee has more than 8 weeks annual leave credited to him or her; and
  - (iii) the amount of annual leave left to the employee's credit is at least 4 weeks.

### 22.5 Cashing out of Annual Leave

- (a) A employee may request up to 2 weeks per annum of paid annual leave be 'cashed out', subject to the agreement of the Employer and the following conditions:
  - (i) The request from the employee shall be in writing; and
  - (ii) The paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid leave being less than 4 weeks; and
  - (iii) Each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the Employer and the employee; and



- (iv) The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone. Specifically, the employee shall receive:
  - (A) superannuation contributions on the amount 'cashed out'; and
  - (B) additional payments for leave loading or penalty rates and other payments prescribed by clause 22.6 of this Agreement.
- (v) Whilst cashing out of annual leave is at the initiative of the employee and requires the consent of both parties, nothing in this clause shall prevent the Employer from advising the employee of his/ her entitlement to request the cashing out of annual leave.

#### **22.6 Annual Leave Loading**

- (a) In addition to their annual leave payment, an employee, other than a shift worker, will be paid an annual leave loading of 17.5% of their ordinary pay. For nursing classifications leave loading of 17.5% of their ordinary pay will be paid on a maximum of 152 hours/four weeks of annual leave per annum.
- (b) Shift workers, as prescribed by clause 22.2(b) and (d) of this agreement; in addition to their annual leave payment, will be paid the higher of:
  - (i) an annual leave loading of 17.5% of their annual leave; or
  - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.
- (c) Shift allowances and weekend penalties are not payable for public holidays which occur during a period of annual leave.

#### **22.7 Annual Leave and Service**

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

#### **22.8 Payment of Annual Leave on Termination**

- (a) On the termination of their employment, an employee will be paid their accrued but untaken annual leave.
- (b) Annual leave loading is payable on termination (including resignation) of an employee's employment. Weekend and shift penalties are not payable on termination (including resignation) for any reason.

### **23. PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE**

- 23.1 Casual employees have no entitlement to paid personal/carer's leave or compassionate leave, but do have an entitlement to unpaid leave.

#### **23.2 Entitlement to paid Personal/Carers Leave**

- (a) For each year of service with his or her employer, an employee, other than a casual 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.

### **23.3 Taking of Personal/Carer's Leave**

An employee may take paid personal/carer's leave if the leave is taken:

- (a) because 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.

### **23.4 Payment of Paid Personal/Carer's Leave**

If an employee takes a period of paid personal/carer's leave, 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.

### **23.5 Personal /Carers Leave on Public Holidays**

If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

### **23.6 Unpaid Carer's Leave**

- (a) An employee, including a casual employee, is entitled to 2 days unpaid carer's leave for each occasion when a member of the employee's Immediate Family, or a member of the employee's household, requires care or support because of:
  - (i) a personal illness, or personal injury, affecting the member; or
  - (ii) an unexpected emergency affecting the member.
- (b) An employee may take unpaid carer's leave as:
  - (i) a single continuous period of up to 2 days; or
  - (ii) any separate periods agreed with the employer.
- (c) An employee is entitled to unpaid carer's leave for a particular occasion only if the employee cannot take an amount of paid personal/carer's leave.

### **23.7 Compassionate Leave**

- (a) An employee is entitled to 2 days of compassionate leave for each occasion when a member of the employee's immediate family, or a member of the employee's household:
  - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or

- (ii) sustains a personal injury that poses a serious threat to his or her life; or
  - (iii) dies.
- (b) An employee may take compassionate leave as:
  - (i) a single continuous period of 2 days; or
  - (ii) 2 separate periods of 1 day each; or
  - (iii) any separate periods agreed with the Employer.

### **23.8 Payment for Compassionate Leave**

- (a) If an employee takes a period of paid compassionate leave, the Employer must pay the employee, other than a casual employee, at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) Casual employees are entitled to unpaid compassionate leave.

### **23.9 Notice and Evidence Requirements**

- (a) To be entitled to leave under clause 23 an employee must give the Employer notice:
  - (i) 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 his or her employment; and
  - (ii) of the period, or expected period of the leave.
- (b) The Employer may require an employee to give the Employer evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion.
- (c) To be entitled to personal leave during the period, the employee must (if required by the Employer) give the Employer as soon as reasonably practicable (which may be at a time before or after the personal leave has started):
  - (i) if it is reasonably practicable to do so - a medical certificate from a registered health practitioner 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) if it is not reasonably practicable for the employee to give the employer a medical certificate - 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.
- (d) To be entitled to carer's leave during the period, the employee must (if required by the Employer) give the Employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started):
  - (i) a medical certificate from a registered health practitioner stating that in their opinion the member of the employee's immediate family or household requires or required care and support during the period due to personal illness or injury; or
  - (ii) 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 that person requires or required

care or support during the period because of personal illness, or injury, or an unexpected emergency.

- (e) To be entitled to compassionate leave during the period, the Employer may request:
  - (i) a medical certificate from a registered health practitioner 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 a serious threat to the life of the member or the death of the member.

#### **23.10 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.

### **24. COMMUNITY SERVICE LEAVE**

24.1 Employees are entitled to community service leave in respect of eligible community service activities.

24.2 Eligible community service activities:

- (a) entitle an employee, acting reasonably, to be absent from employment for periods including:
  - (i) time when the employee engages in the activity;
  - (ii) reasonable travelling time associated with the activity; and
  - (iii) reasonable rest time immediately following the activity.
- (b) include:
  - (i) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
  - (ii) a voluntary emergency management activity; or
  - (iii) an activity otherwise prescribed in the Regulations.

#### **24.3 Jury Service**

- (a) There is no limit on the amount of unpaid jury service leave an employee can take in a 12 month period of employment.
- (b) Employees, other than casuals, are entitled to be paid:
  - (i) for the first 10 days when absent from work in one or more periods to attend jury service in response to a particular jury service summons; and
  - (ii) the difference between what the employee received as jury service pay and the base rate of pay for the employee's ordinary hours of work in the period or periods.

- (c) The Employer may require the employee to provide evidence that would satisfy a reasonable person:
  - (i) that the employee took all necessary steps to obtain any amount of jury service pay to which they were entitled; and
  - (ii) of the total amount of jury service pay, paid or payable to the employee.
- (d) No payment is required where evidence is required by the Employer and not provided by the employee.

#### **24.4 Voluntary emergency management activity (VEMA)**

- (a) An employee engages in a VEMA if:
  - (i) they voluntarily participate;
  - (ii) the activity involves dealing with an emergency or natural disaster;
  - (iii) they are a member of, or have a member like association with a recognised emergency management body (REMB); and
  - (iv) the REMB requests their participation.

### **25. PARENTAL LEAVE**

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

#### **25.2 Paid parental leave**

- (a) Full-time and part-time employees with at least 12 months' continuous service with the Employer who are eligible for unpaid parental leave as the primary care giver, will also be entitled to paid parental leave at ordinary pay, from the date the parental leave commences.
- (b) Paid parental leave includes:
  - (i) 8 weeks' paid parental leave for the primary carer; or
  - (ii) 8 weeks' paid adoption leave for the initial primary carer of an adopted child.
- (c) Employees who are not the primary care giver of a child will be entitled to 2 week's paid partner leave.
- (d) Paid partner leave will be payable to:
  - (i) the secondary carer; or
  - (ii) partner of the primary carer; or
  - (iii) partner of the initial primary carer of an adopted child.
- (e) For the purposes of this clause of the Agreement, "partner" includes same-sex and de facto partner but does not include former partners.
- (f) Superannuation Guarantee Contributions will be paid during period of paid parental leave.

- (g) The Employer's paid parental leave scheme as set out in this clause of the Agreement is separate to, and will operate in addition to, the Federal Government's national paid parental leave scheme that is governed by the *Paid Parental Leave Act 2010 (Cth)*, save that the Employer and an employee may reach an agreement as to the arrangements for taking paid parental leave in accordance with this Agreement consecutively or concurrently with any entitlement to paid parental leave under the Government's national scheme.

## **26. LONG SERVICE LEAVE**

- 26.1 An employee's entitlement to long service leave shall be in accordance with the provisions of this Agreement and the *Long Service Leave Act 1955 (NSW)* provided that should there be any inconsistency between that legislation and the provisions of this Agreement these provisions shall prevail to the extent this Agreement entitles employees to long service leave in excess of the employees' entitlement to long service leave under the *Long Service Leave Act (1955) NSW*.

### **26.2 Entitlement**

#### **(a) Nurse Classifications**

Each employee shall be entitled to two months' long service leave on ordinary pay after 10 years' service. After 15 years' continuous service each employee shall be entitled to an additional 1 month's long service leave on ordinary pay. For each 5 years' continuous service thereafter, each employee shall be entitled to an additional one and a half month's long service leave on ordinary pay.

#### **(b) Aged Care Classifications**

Each employee shall be entitled to 2 months' long service leave on ordinary pay after 10 years' service. Thereafter additional long service leave shall accrue on the basis of 5 months' long service leave for each 10 years' service. This additional leave may be taken on a pro-rata basis each 5 years after completing the initial 10 year period of service.

- 26.3 Where the services of an employee with at least 5 years' service are terminated by the employer for any reason other than the employee's serious and wilful misconduct, or by the employee on account of illness, incapacity or domestic or other pressing necessity, or by reason of the death of the employee, he/she shall be entitled to be paid a proportionate amount of the amounts prescribed in clause 26.2 of this Agreement as applicable.

- 26.4 For the purpose of this clause service shall mean continuous service with the Employer. Service shall not include any periods of leave without pay;

- 26.5 (a) The Employer shall give to each employee at least 1 months' notice of the date from which it is proposed that the employee's long service leave shall be given and taken. Long service leave shall be taken as soon as practicable having regard to the needs of the workplace, or where the Employer and the employee agree, such leave may be postponed to an agreed date.

- (b) Where the Employer and the employee agree in writing that the taking of a period of leave be postponed at the request of an employee to an agreed future date, the period of leave at the time of the agreement being made will, when taken, be paid at the rate applicable at the time of the agreement.

- 26.6 (a) On the termination of employment of an employee, otherwise than by his or her death, the Employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination.



- (b) Where an employee who has acquired a right to long service leave, or after having had five years' service and less than 10 years' service dies, the employee's personal representative shall, upon request, be entitled to receive the monetary value of the leave not taken or which would have accrued to such employee had his or her services terminated as referred to in clause 26.3 and such monetary value shall be determined according to the salary payable to the employee at the time of his or her death.

26.7 Where an employee has been granted a period of long service leave prior to the coming into force of this Agreement, the amount of such leave shall be debited against the amount of leave due under this Agreement.

26.8 At the request in writing of the employee, and then by agreement of the Employer, Long Service Leave entitlements may be taken as double the quantum of leave at half pay or half the quantum of leave at double pay.

## 27. CEREMONIAL LEAVE

An employee who is required by Aboriginal and Torres Strait Islander tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the Employer.

## 28. DOMESTIC OR FAMILY VIOLENCE LEAVE

Mercy Health acknowledges there will be times when an employee may need time off work, or greater flexibility in their working arrangements to attend to health, legal, financial or other personal appointments associated with family violence. On receipt of supporting evidence, an employee experiencing family violence may access paid or unpaid leave in order to address issues associated with family violence. This leave may be in addition to other existing leave entitlements and does not accrue. Casual employees are entitled to access leave without pay for family violence purposes. Refer [PROMPT Employees Experiencing Family Violence Policy and Procedure](#).

## PART 4 - OTHER PROVISIONS

### 29. TERMINATION OF EMPLOYMENT

29.1 In the event the Employer or an employee (other than a casual employee) wishes to terminate the employee's employment with the Employer, the following period of notice shall be provided in writing by either party.

- | (a) | (i) | <u>Period of Continuous Service</u>         | <u>Minimum Period of Notice</u> |
|-----|-----|---|---------------------------------|
|     |     | 1 year or less                              | 1 week                          |
|     |     | More than 1 year but not more than 3 years  | 2 weeks                         |
|     |     | More than 3 years but not more than 5 years | 3 weeks                         |
|     |     | More than 5 years                           | 4 weeks                         |
- (ii) A Deputy Director of Nursing and a Director of Nursing shall be entitled to 4 weeks' notice.
- (b) Employees (other than casuals) aged 45 years or older at the time of termination will be entitled to an additional 1 weeks' notice if the employee has completed at least 2 years continuous service for the Employer.
- (c) Casuals are to be given and shall give notice to the end of the current shift worked.

- 29.2 The Employer may at its discretion require the employee to work some or all of the notice period prescribed in clause 29.1 of this Agreement. Further, the Employer may make a payment to the employee in lieu of such notice period.
- 29.3 The Employer may, without notice, summarily dismiss an employee at any time for serious misconduct or wilful disobedience. Payment is up to the time of dismissal only.

### 30. CONSULTATION REGARDING MAJOR WORKPLACE CHANGE

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

#### *Major change*

- 30.2 For a major change referred to in paragraph 30.1(a):
- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
  - (b) subclauses (30.3) to (30.9) apply.
- 30.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 30.4 If:
- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
  - (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.
- 30.5 As soon as practicable after making its decision, the employer must:
- (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.
- 30.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 30.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 30.8 If a term in this agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph 30.2(a) and subclauses 30.3 and 30.5 are taken not to apply.
- 30.9 In this term, a major change is ***likely to have a significant effect on employees*** if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or



- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

*Change to regular roster or ordinary hours of work*

30.10 For a change referred to in paragraph 30.1(b):

- (a) the employer must notify the relevant employees of the proposed change; and
- (b) subclauses (30.11) to (30.15) apply.

30.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.

30.12 If:

- (a) a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
- (b) the employee or employees advise the employer of the identity of the representative; the employer must recognise the representative.

30.13 As soon as practicable after proposing to introduce the change, the employer must:

- (a) discuss with the relevant employees the introduction of the change; and
- (b) for the purposes of the discussion—provide to the relevant employees:
  - (i) all relevant information about the change, including the nature of the change; and
  - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
  - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
- (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

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

30.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

30.16 In this term:

**relevant employees** means the employees who may be affected by a change referred to in subclause 30.1.

30.17 The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.

30.18 These provisions are to be read in conjunction with other award provisions concerning the scheduling of work and notice requirements.

## **31. REDUNDANCY**

31.1 An employee's entitlement to redundancy pay shall be in accordance with the provisions of the Act and this Agreement provided that should there be any inconsistency between the Act and the provisions of this Agreement, these provisions shall prevail to the extent the Agreement entitles employees to redundancy pay in excess of the employees' entitlement to redundancy pay under the Act.

31.2 Redundancy occurs where the Employer has made a definite decision that the Employer no longer

wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour; or because of the insolvency or bankruptcy of the Employer.

- 31.3 For the purposes of this clause, "service" and "continuous service" shall be as defined in section 22 of the Act as amended from time to time.
- 31.4 An employee's entitlement to redundancy pay shall be in accordance with the National Employment Standards prescribed by the Act as amended from time to time.
- 31.5 Subject to an application by the Employer and further order of the FWC, the Employer may pay a lesser amount (or no amount) of redundancy pay than that contained in this clause 31.

## **32. REMUNERATION PACKAGING**

Where agreed between the Employer and an employee, the Employer may introduce remuneration packaging. The terms and conditions of such a package shall be agreed between the Employer and the employee at the time of entering into the packaging arrangement provided that the package overall shall not be less favourable than the entitlements otherwise available under this Agreement.

## **33. ATTENDANCE AT MEETINGS, COMPULSORY EDUCATION AND TRAINING**

- 33.1 All employees have a responsibility to maintain and upgrade their skills commensurate with the requirement of their position. In particular every Employee must attend training required to meet statutory responsibilities including but not limited to: fire and emergency training, manual handling training, infection control, food handling provided by the Employer in each twelve month period or as required.
- 33.2 Where the Employee attends compulsory training other than during the course of a rostered shift, the minimum payment shall be:
  - (a) The length of the training where the training is scheduled continuous with the commencement or end of a rostered shift for that Employee.
  - (b) Where the training has not been scheduled at the start or finish of a shift for which the Employee is rostered and the Employee has to make a separate trip to the facility the payment will be the length of the training or the Employee's minimum engagement whichever is the greater.
- 33.3 Any employee required to attend Occupational Health and Safety Committee meetings in the capacity of employee representative shall be entitled to receive ordinary pay per hour for the actual time spent in attendance at such meetings. Meetings will be held during the ordinary hours of work for a day worker. In lieu of receiving payment, employees may, with the agreement of the employer, be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent shall not be viewed as overtime for the purposes of this Agreement.
- 33.4 Attendance at any training course other than those referred to in clause 33.1 above may be supported by the Employer in accordance with specific policy initiatives. In particular, the parties acknowledge that it is highly desirable for Employees to attend training provided by the Employer.
- 33.5 Where the Employer has implemented or is participating in a no lift training program every employee must attend the training required.

## **34. EDUCATION AND PROFESSIONAL DEVELOPMENT**

### **34.1 Examination / Study Leave**

- (a) Full time Aged Care staff and Nurses (other than Registered Nurses) shall be entitled to 4 days paid study/examination leave per annum for the purposes of attending and/or undertaking or preparing for examinations in a relevant course of study conducted by a recognised institution.
- (b) Part time employees who work more than 4 shifts a fortnight shall be entitled to study/examination Leave in accordance with this clause on a pro rata basis.
- (c) Leave entitlements pursuant to this clause shall not accumulate from year to year.
- (d) Entitlement to study/examination leave shall be granted for studies which are relevant to employment.
- (e) Study/ examination leave shall be taken at a time that is mutually agreed between the Employer and the employee.
- (f) On application, the Employer may meet the up front cost of further education with a repayment over time arrangement at no additional cost to the employee.

### **34.2 Professional Development of Registered Nursing Staff**

- (a) The Employer supports the ongoing professional development of nursing staff. The organisation will encourage all Registered Nurses in residential care to attend relevant seminars and conferences on a regular basis. Costs will either be shared or paid for in total by the Employer when appropriate.
- (b) The Employer further agrees that full-time and part-time (4 shifts or more per fortnight) Registered Nurses will be entitled to 4 days paid professional development/ conference leave per year.
- (c) This leave is in addition to other leave entitlements in this Agreement. To access the benefits of this provision it is the responsibility of the employee to make an application for this leave.
- (d) This leave is to be taken within each calendar year and is not cumulative.
- (e) An application for this leave, nominating the preferred date(s) will be made in writing providing a brief description of the nature of the professional development activity to be undertaken. The application may be for research, attendance at seminars and conferences.
- (f) An application for this leave will be submitted 3 months in advance to the Employer in writing. In certain circumstances late applications will be considered at the discretion of the Employer. The Employer will advise the employee in writing within 7 days if the application for the requested leave is approved.

## **35. AMENITIES**

- 35.1 The minimum standards as set out in all relevant occupational health and safety legislation shall be met in the provision of amenities to employees.
- 35.2 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

## **36. INSPECTION OF LOCKERS**

Where lockers are provided by the employer such lockers may only be opened for inspection in the presence of the employee but in cases where the employee neglects or refuses to be present or in any circumstances where notice to the employee is impracticable, such inspection may be carried out in the absence of the employee by an officer of the Employer and an employee representative where practicable, otherwise by any two officers appointed by the employer for that purpose.

## **37. GRIEVANCE AND DISPUTE RESOLUTION PROCEDURES**

37.1 Unless otherwise stated the terms “party” or “parties” referred to in this clause means the Employer and/or the employees, as the context requires.

37.2 This dispute resolution procedure will apply to disputes about:

- (a) any matters arising under this Agreement, except matters relating to the actual termination of employment of an employee;
- (b) threatened termination, with the exception that the arbitration provisions in subclause 37.6 do not apply unless the parties agree. Further, the parties rights are reserved during this process and the Employer may exercise their right to terminate the employee in accordance with the Agreement; and
- (c) matters in relation to the NES;

37.3 The Employer or Employee may appoint another person, organisation or association (e.g. Union or Employer Association) to accompany and/or represent them for the purposes of this clause.

37.4 In the event of a dispute the parties will initially attempt to resolve the matter at the workplace level, in a timely manner including, but not limited to:

- (a) the employee and his or her supervisor discussing the matter; and
- (b) if the matter is still not resolved the parties arranging further discussions involving more senior levels of management (as appropriate).

37.5 If a dispute is unable to be resolved at the workplace in accordance with subclause 37.4, a party to the dispute may refer the matter to the FWC. In the event of either party referring the matter to the FWC status quo will be maintained until the matter is resolved or until the FWC is reasonably satisfied whichever occurs first.

37.6 The parties agree that the FWC shall have the power to do all such things as are necessary for the just resolution of the dispute including:

- (a) mediation, conciliation and, with the exception of disputes arising under clause 37.2(b) and clause 39 Workload Management, arbitration; and
- (b) arbitration, save for disputes arising under clause 37.2(b) and clause 39 Workload management, in which case, only with the agreement of the parties.

37.7 For the purpose of making conciliation under this clause effective, when conciliating the FWC shall be able to do any of the things in Division 3 of Part 5-1 of the Act. In addition, when conciliating under this clause, the FWC can dismiss the matter or issue a statement or recommendation but not a decision.

37.8 If arbitration is necessary, the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.

- 37.9 For the purpose of making arbitration under this clause effective, when arbitrating the FWC shall be able to perform any of the powers under Subdivision B of Division 3 of Part 5-1 of the Act. In addition, when arbitrating under this clause, the FWC can dismiss the matter and/or issue a written decision.
- 37.10 Matters raised in relation to bona fide safety issues are to be investigated and corrected as quickly as possible in accordance with the *Work Health and Safety Act 2011 (NSW)*.
- 37.11 While the dispute resolution procedure is being conducted, work must continue in accordance with this Agreement and the Act. Subject to applicable work health and safety legislation, an employee must not unreasonably fail to comply with a direction by the Employer to perform work, whether at the same or another workplace that is safe and appropriate for the employee to perform.
- 37.12 The term "industrial action" means industrial action as defined in s19 of the Act but does not include industrial action which is protected under the Act.

*(Note: the reference in this clause to Section 19 of the Act is a reference to that section as in force on the date of lodgement of this Agreement).*

## **38. DISCIPLINARY PROCEDURE**

- 38.1 The Employer commits itself to effective and efficient performance management. Wherever appropriate, disciplinary action will only be taken after the performance, conduct or behaviour of an employee has been addressed with that employee. Performance management will be managed in a timely, objective and fair manner in accordance with the principles of natural justice.
- 38.2 Where disciplinary action is necessary, the management representative shall notify the employee of the reason(s) in writing and the employee will be given an opportunity to respond to these reasons. In the event that the employee's explanation is deemed by the organisation management to be unsatisfactory, a **written warning** may be issued. This warning will be recorded on the employee's personnel file.
- 38.3 If the problem continues, the employee will again be notified in writing of the matter and an explanation requested from the employee. If appropriate, a **further written warning** will be given to the employee and recorded on the employee's personnel file.
- 38.4 In the event that the problem continues, the employee will again be notified in writing of the matter and explanation requested. If appropriate, a **final written warning** will be issued to the employee and recorded on the employee's personnel file.
- 38.5 In the event of the matter recurring, then the employee may be terminated after the matters have been investigated and an explanation sought from the employee. No dismissals will take place without the authority of the CEO or his/her delegated authority.
- 38.6 Summary dismissal of an employee may still occur for acts of "serious and wilful misconduct". Where an allegation of 'serious misconduct' is proven and the Employer, having considered all the circumstances does not wish to terminate the employee's employment, a warning may be issued under clause 38.4.
- 38.7 During all the steps in the Disciplinary Procedure, the employee has the right to representation of his or her choice.
- 38.8 If after any warning, a period of twelve months elapses without any further warning or action being required, all adverse reports relating to the warning will be removed from the employee's personnel file.



- 38.9 Notwithstanding the above, nothing in this clause creates additional rights for an employee during an applicable minimum employment period within the meaning of s.383 of the Act.

### **39. WORKLOAD MANAGEMENT**

***The parties to this agreement acknowledge that employees and management have a responsibility to maintain a balanced workload and recognise the adverse effects that excessive workloads may have on employee/s and the quality of resident/client care.***

***To ensure that employee concerns involving excessive workloads are effectively dealt with by Management the following procedures should be applied:***

- (a) In the first instance, employee/s should discuss the issue with their immediate supervisor and, where appropriate, explore solutions.
- (b) If a solution cannot be identified and implemented, the matter should be referred to an appropriate senior manager for further discussion.
- (c) If a solution still cannot be identified and implemented, the matter should be referred to the Facility Manager for further discussion.
- (d) The outcome of the discussions at each level and any proposed solutions should be recorded in writing and fed back to the effected employees.

***Workload management must be an agenda item at staff meetings 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. Resolution of workload issues should be based on the following criteria including but not limited to:***

- (a) Clinical assessment of residents' needs;
- (b) The demand of the environment such as facility layout;
- (c) Statutory obligation, (including, but not limited to, workplace health and safety legislation;
- (d) The requirements of nurse regulatory legislation;
- (e) Reasonable workloads;
- (f) Accreditation standards;
- (g) Replacement of employees on leave; and
- (h) Budgetary considerations.

If the issue is still unresolved, the employee/s may advance the matter through Clause 37 - Grievance and Disputes Resolution Procedures. Arbitration of workload management issues may only occur by agreement of all parties.

### **40. UNION DELEGATES**

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

The employer will recognise one delegate from the HSU and one delegate from the NSWNMA in each workplace, upon receipt of written notification from each of the respective Unions.

A delegate will be released from work to attend union business in accordance with the following:

- (a) up to five (5) days per calendar year to attend training facilitated by the Union to increase awareness and knowledge of workplace issues and/or consultative mechanisms and/or statutory entitlements and obligations, which will contribute to a more productive, aware and harmonious workplace environment;
- (b) up to three (3) days leave to attend either; the NSWNMA Annual Conference/ the HSU Annual Conference;
- (c) a minimum of four (4) weeks' written notice, or less by agreement, must be provided to the employer of a request to attend such union business. The notice must specify the time and nature of the union business; and
- (d) subject to operational requirements an employer shall not unreasonably refuse such a request .

A delegate may access leave without pay, Annual Leave or Long Service Leave, for the purposes of attending such training.

A delegate will be provided with reasonable access to telephone, internet, email, facsimile, photocopying, notice boards and meeting facilities (where available) for the purpose of carrying out work as a delegate.

#### **41. WORKPLACE HEALTH AND SAFETY**

The employer is committed to continuous improvement in health and safety standards and has established consultative arrangements which are in accordance with the relevant occupational health and safety act and regulations. The employer ensures ongoing training and support for staff in respect to occupational health and safety standards.

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*.

#### **42. MISSION AND MODEL OF CARE**

Mercy Health, founded by the Sisters of Mercy, is a Catholic organisation grounded in a 2,000-year tradition of caring for others.

Our Model of Care is resident centred and delivered in line with our Philosophy of Care in that we:

- Value each person and their story knowing this is what makes them who they are today
- Welcome people into a home environment where they feel safe, comfortable and valued
- Partner with residents and their families to nurture individual health, emotional, social and spiritual wellbeing
- Encourage independence and support people to live their lives to their fullest potential
- Enable each person to discover and fulfil opportunities to live an enriched and meaningful life

By respecting each person we care for in these ways we aspire to ensure they have their best day possible, each and every day.

#### **Shared Commitment to the Model of Care**

The parties covered by this Agreement recognise:

- a) That the Aged Care Industry is undergoing a process of change and reform and therefore the parties are committed to exploring new and innovative workforce and staffing models that are

safe and sustainable to positively identify measures to improve productivity and efficiency at the enterprise level during the life of this Agreement; and

- b) This Agreement as representing a commitment to full participation to deliver care in accordance with the Model of Care requirements of the Employer.



**EXECUTION:**

Signed for and on behalf of: **Mercy Aged and Community Care Ltd. (Mercy Health) (A.B.N. 77 191 901 062)**

by its duly authorised officer:

Signed for the Employer: 

Print Full Name: FELIX PINTADO

Position: CHIEF EXECUTIVE, RESIDENTIAL AGED CARE  
HOME CARE & SENIORS LIVING

Business Address: 12 SHELLEY ST.  
RICHMOND VIC 3121

**Witness**

Signed by witness: 

Print Full Name: Karen Horner

*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.*

Signed for and on behalf of: **HSU New South Wales Branch** as bargaining representative:

Signed by Officer: .....

Print Full Name: .....

Position: .....

Business Address: .....

.....

**Witness**

Signed by witness: .....

Print Full Name: .....

## **Schedule 1 – NURSING CLASSIFICATION DEFINITIONS**

**Assistant in Nursing** means a person, other than a registered nurse, trainee or enrolled nurse or any other classification who is primarily employed in nursing duties in a residential aged care facility. An Assistant in Nursing may be directed to carry out other tasks which are within an Employee's skill, competence or training around residents or within the facility.

**Clinical Care Coordinator** means a registered nurse appointed as such to the position, who has had at least five years' post registration experience and who has in addition approved post registration nursing qualifications relevant to the field in which they are appointed or such other qualifications or experience deemed appropriate by the Employer.

**Deputy Director of Nursing** means an employee registered as a Registered Nurse by the AHPRA and who holds such further qualifications as the Employer may require. In addition to the duties of a Registered Nurse, a Deputy Director of Nursing shall be required to perform duties including, but not limited to:

- providing leadership and role modelling, in collaboration with others, 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 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.

**Director of Nursing** means an employee registered as a Registered Nurse by the AHPRA and who holds such further qualifications as the Employer may require. In addition to the duties of a Registered Nurse, a Director of Nursing shall be required to perform duties including, but not limited to:

- being accountable for the standards of nursing care and for coordination of the nursing services of the Employer;
- participating as a member of the executive of the Employer, being accountable to the executive for the development and evaluation of nursing policy, and generally contributing to the development of the Employer's policy;
- providing leadership, direction and management of the nursing division of the Employer in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Employer;

- 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 Employer;
- managing the budget of the nursing division of the Employer;
- ensuring that nursing services meet the 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.

**Enrolled Nurse (EEN)** means a nurse enrolled with AHPRA who is authorised to administer medications.

**Enrolled Nurse (EN)** (without medication qualification) means a person enrolled with AHPRA who has the following notation on their registration: “Does not hold AHPRA-approved qualifications in administration of medications” attached to their enrolment.

**Nurse** includes Registered Nurses, Enrolled Nurses and Assistants in Nursing.

**Registered Nurse** means a person registered by AHPRA as such. Registered Nurses will have their classification determined in accordance with the table below:

<b>Registered Nurse Experience</b>	<b>Agreement Classification Title</b>
Registered Nurse 1 <sup>st</sup> Year	Registered Nurse Level 1 PP1
Registered Nurse 2 <sup>nd</sup> Year	Registered Nurse Level 1 PP2
Registered Nurse 3 <sup>rd</sup> Year	Registered Nurse Level 1 PP3
Registered Nurse 4 <sup>th</sup> Year	Registered Nurse Level 1 PP4
Registered Nurse 5 <sup>th</sup> Year & Thereafter	Registered Nurse Level 1 PP5 & thereafter
Clinical Care Coordinator/Deputy Director of Nursing 1 <sup>st</sup> Year	Registered Nurse Level 4 Gr1
Clinical Care Coordinator/Deputy Director of Nursing 2 <sup>nd</sup> Year	Registered Nurse Level 4 Gr2
Clinical Care Coordinator/Deputy Director of Nursing 3 <sup>rd</sup> Year	Registered Nurse Level 4 Gr3
Director of Nursing	Registered Nurse Level 5

## Schedule 2 – AGED CARE CLASSIFICATION DEFINITIONS

### CARE SERVICE EMPLOYEES

**Aged Care Employee Level 2** means an employee who has 500 hours work experience in the industry or who has or can demonstrate relevant prior experience, acceptable to the Employer, which enables the employee to work effectively at this level. A junior employee (less than 18 years) when classified at this level may be paid as a new entrant. An employee who works under limited supervision individually or in a team environment. Employees at this level work within established guidelines including compliance with documentation requirements as determined by the Employer. In some situations detailed instructions may be necessary. Indicative tasks an employee at this level may perform are as follows:

#### Typical Duties

Care Stream	Support Stream	Maintenance Stream
Under limited supervision, provide assistance to residents in carrying out simple personal care tasks which shall include but not be limited to: supervise daily hygiene e.g. assisting with showers or baths, shaving, cutting nails; lay out clothes and assist in dressing; make beds and tidy rooms; store clothes and clean wardrobes; assist with meals. Under direct supervision, provide assistance to a higher Grade Aged Care employee in attending to the personal care needs of a resident.	Performance under limited supervision of the full range of Domestic duties including but not limited to: general cleaning of accommodation, food service, and general areas; general waiting, table service and clearing duties; assistance in the preparation of food, including the cooking and/or preparation of light refreshments; all laundry duties.	Performance under limited supervision of labouring duties associated with gardening and general maintenance activities, including but not limited to: sweeping; hosing; garbage collection and disposal; keeping the outside of buildings clean and tidy; mowing lawns and assisting the gardener in labouring.

Indicative tasks performed at this level include, but are not limited to clerk, laundry hand, cleaner, driver. Maintenance/handyperson (unqualified) and Aged Care employee.

**Aged Care Employee Level 3** means an employee with relevant experience who works individually or in a team environment, and is responsible for the quality of their own work, subject to general supervision, including compliance with documentation requirements as determined by the Employer. Indicative tasks an employee at this level may perform are as follows:

#### Typical Duties

Care Stream	Support Stream	Maintenance Stream
Provide a wide range of personal care services to residents, under limited supervision, in accordance with Commonwealth and State Legislative requirements, and in accordance with the resident's Care Plan, including: assist and support residents with medication utilising medication compliance aids; simple wound dressing; Implementation of continence programs as identified in the Care Plan; attend to routine urinalysis, blood pressure, temperature and pulse checks; blood sugar level checks etc and assist and support diabetic	Assist a higher grade worker in the planning, cooking and preparation of the full range of meals. Drive a Sedan or Utility.	Undertake basic repairs to buildings, equipment, appliances, and similar items not calling for trades skills or knowledge. Work with and undertake limited coordination of the work of other maintenance workers. Where no tradesperson is employed, an employee at this level may be called upon to perform tasks falling within the scope of trades skills, provided the time involved in



residents in the management of their insulin and diet, recognising the signs of both Hyper and Hypo-Glycaemia. recognise, report and respond appropriately to changes in the condition of residents, within the skills and competence of the Employee and the policies and procedures of the organisation; assist in the development and implementation of resident care plans; assist in the development and implementation of programs of activities for residents, under the supervision of an Aged Care Employee Level 4 or above, or a Diversional Therapist.		performing such work, is paid at the rate of Aged Care Employee Level 4. Perform gardening duties. Provide advice on planning and plant maintenance. Attend to indoor plants, conduct recycling and re-potting schedules. Carry out physical inspections of property and premises and report.
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Indicative tasks performed at this level include, but are not limited to clerk, receptionist, driver required to hold a first aid certificate, cook, gardener (unqualified) and Aged Care employee.

**Aged Care Employee Level 4** means an employee who holds either a Certificate Level III in Aged Care Work or other appropriate Qualifications/Experience acceptable to the Employer.

An employee who holds appropriate Trade Qualifications and is required to act on them. Employees at this level may be required to plan, direct, and train staff and comply with documentation requirements as determined by the Employer and assist in the development of budgets. Indicative tasks an employee at this level may perform are as follows:

#### Typical Duties

Care Stream	Support Stream	Maintenance Stream
Coordinate and direct the work of staff. Schedule work programs on a routine and regular basis. Develop and implement programs of activities for residents. Develop resident care plans.	Responsible for the planning, ordering and preparing of all meals. Responsible for the provision of domestic services. Schedule work programs on a routine and regular basis. Coordinate and direct the work of staff. Drive a Minibus or Larger Vehicle.	Carry out maintenance, repairs, gardening and other tasks falling within the scope of trades skills. Undertake the more complicated repairs to equipment and appliances calling for trades skills. Coordinate and direct the work of staff performing gardening duties. Schedule work programs on a routine and regular basis.

Indicative tasks performed at this level include, but are not limited to chef, driver required to hold a first aid certificate, gardener (qualified), maintenance/handyperson (qualified), Aged Care employee.

**Aged Care Employee Level 5** means:

An employee who holds a Certificate IV in Aged Care Work (CHC40102) or other appropriate qualifications/experience acceptable to the Employer is required to act on them and:

- i. is designated by the Employer as having the responsibility for leading and/or supervising the work of others in excess of that required for an Aged Care Employee Level 4; and
- ii. is required to work individually with minimal supervision.

Employees at Aged Care Employee level 5 may be required to exercise any/all managerial functions in relation to the operation of the care service and comply with documentation requirements as determined by the Employer. Indicative tasks an employee at this level may perform are as follows.

#### Typical Duties

Care Stream	Support Stream	Maintenance Stream
Overall responsibility for the provision of personal care to residents. Coordinate and direct the work of staff. Schedule work programs.	Coordinate and direct the work of staff involved with the preparation and delivery of food. Schedule work programs.	Coordinate and direct the work of staff performing gardening duties. Schedule gardening work programs. Where required, supervise contractors associated with gardening.

#### Aged Care Employee Level 7 means:

This grade shall only apply to employees having responsibility for supervision of the entire facility.

An employee who may be required to have and use any additional qualifications above a certificate level.

Employees at this level may be required to exercise any/all managerial functions in relation to the operation of the Facility and comply with documentation requirements as determined by the Employer.

#### OTHER

**"Catering Officer"** means a person who is responsible for catering services.

**"Maintenance Supervisor (Tradesperson)"** means an employee who has trade qualifications and has overall responsibility for maintenance at the place of employment and may be required to supervise other maintenance staff.

**"Maintenance Supervisor (Otherwise)"** means an employee who is required to perform maintenance duties as required and who may be required to supervise other maintenance staff and has overall responsibility for maintenance.

#### CLERICAL & ADMINISTRATIVE EMPLOYEES

- (a) Levels: All clerical and administrative employees shall be employed at one of the following levels and informed accordingly in writing within fourteen (14) days of appointment to the position held by the employee and subsequent graded positions.
- (b) An employee shall be graded at the level where the principal function of his or her employment, as determined by the Employer, is of a clerical nature and is described in subclauses (c) to (e) of this clause.
- (c) **Aged Care Employee Level 3 (Clerical & Administrative)** position is described as follows:
  - i. The employee may work under direct supervision with regular checking of progress.
  - ii. An employee at this level applies knowledge and skills to a limited range of tasks. The choice of actions required is clear.
  - iii. Usually work will be performed within established routines, methods and procedures that are predictable, and which may require the exercise of limited discretion.

Indicative tasks an employee at this level may perform are as follows:

- **Information Handling:** Receive and distribute incoming mail; receive and dispatch outgoing mail; collate and dispatch documents for bulk mailing; file and retrieve documents
- **Communication:** Receive and relay oral and written messages; complete simple forms.
- **Enterprise:** Identify key functions and personnel; apply office procedures.
- **Technology:** Operate office equipment appropriate to the tasks to be completed; open computer file, retrieve and copy data; close files.
- **Organisational:** Plan and organise a personal daily work routine.
- **Team:** Complete allocated tasks.
- **Business Financial:** Record petty cash transactions; prepare banking documents; prepare business source documents.

(d) **Aged Care Employee Level 4 (Clerical & Administrative)** position is described as follows:

- i. The employee may work under limited supervision with checking related to overall progress.
- ii. An employee at this level may be responsible for the work of others and may be required to co-ordinate such work.
- iii. An employee at this level applies knowledge with depth in some areas and a broad range of skills. Usually work will be performed within routines, methods and procedures where some discretion and judgement is required.

Indicative tasks an employee at this level may perform are as follows:

- **Information Handling:** Prepare new files; identify and process inactive files; record documentation movements.
- **Communication:** Respond to telephone, oral and written requests for information; draft routine correspondence; handle sensitive inquiries with tact and discretion.
- **Enterprise:** Clarify specific needs of resident/other Employees; provide information and advice; follow-up on resident/Employee needs; clarify the nature of a verbal message; identify options for resolution and act accordingly.
- **Technology:** Maintain equipment; train others in the use of office equipment; select appropriate media; establish document structure; produce documents.
- **Organisational:** Co-ordinate own work routine with others; make and record appointments on behalf of others; make travel and accommodation bookings in line with given itinerary.
- **Team:** Clarify tasks to achieve group goals; negotiate allocation of tasks; monitor own completion of allocated tasks.
- **Business Financial:** Reconcile accounts to balance; prepare bank reconciliations; document and lodge takings at bank; receive and document payment/takings; dispatch statements to debtors; follow up and record outstanding accounts; dispatch payments to creditors; maintain stock control records.

(e) **Aged Care Employee Level 5 (Clerical & Administrative)** position is described as follows:

- i. The employee may be required to work without supervision, with general guidance on progress and outcomes sought. Responsibility for the organisation of the work of others may be involved.
- ii. An employee at this level applies knowledge with depth in some areas and a broad range of skills. There is a wide range of tasks, and the range and choice of actions required will usually be complex.
- iii. An employee at this level applies competencies usually applied within routines, methods and procedures where discretion and judgement is required, for both self and others.

Indicative tasks an employee at this level may perform are as follows:

- **Information Handling:** Categorise files; ensure efficient distribution of files and records; maintain security of filing system; train others in the operation of the filing system; compile report; identify information source(s) inside and outside the organisation.
- **Communication:** Receive and process a request for information; identify information source(s); compose report/correspondence.
- **Enterprise:** Provide information on current service provision and resource allocation within area of responsibility; identify trends in client requirements.
- **Technology:** Maintain storage media; devise and maintain filing system; set printer for document requirements when various setups are available; design document format; assist and train network users; shutdown network equipment.
- **Organisational:** Manage diary on behalf of others; assist with appointment preparation and follow up for others; organise business itinerary; make meeting arrangements; record minutes of meeting; identify credit facilities; prepare content of documentation for meetings.
- **Team:** Plan work for the team; allocate tasks to members of the team; provide training for team members.
- **Business Financial:** Prepare financial reports; draft financial forecasts/budgets; undertake and document costing procedures.



**Schedule 3 – PAY RATES (All rates are inclusive of nauseous allowance)**

<b>Class</b>	<b>Classification Description</b>	<b>FFPP 1.07.18 (Current)</b>	<b>FFPP 1.07.19</b>	<b>FFPP 1.07.20</b>	<b>FFPP 1.07.21</b>
				<b>3%</b>	<b>3%</b>
NAE21	Aged Care Employee Level 2	21.9474	22.7156	23.3970	24.0990
NAE31	Aged Care Employee Level 3	22.8141	23.6126	24.3209	25.0506
NAE43	Aged Care Employee Level 4 Cert III	24.2997	25.1502	25.9047	26.6819
NAE53	Aged Care Employee Level 5	25.0651	25.9424	26.7206	27.5222
NAE73	Aged Care Employee Level 7	26.5620	27.4917	28.3164	29.1659
NE11	Enrolled Nurse PP1	25.8642	26.6401	27.4393	28.2625
NE21	Enrolled Nurse PP2	26.2694	27.0575	27.8692	28.7053
NE31	Enrolled Nurse PP3	26.6070	27.4052	28.2274	29.0742
NE41	Enrolled Nurse PP4	27.0460	27.8574	28.6931	29.5539
NE51	Enrolled Nurse PP5	27.4061	28.2283	29.0752	29.9474
NN11	Nursing Assistant 1 <sup>st</sup> Year	21.6323	22.3894	23.0611	23.7529
NN21	Nursing Assistant 2 <sup>nd</sup> Year	22.3526	23.1349	23.8290	24.5439
NN31	Nursing Assistant 3 <sup>rd</sup> Year	22.8141	23.6126	24.3209	25.0506
NN41	Nursing Assistant Thereafter	23.0617	23.8688	24.5849	25.3224
NN51	Nursing Assistant Cert III/Care Companion	23.5119	24.6757	25.4160	26.1785
NR11	Registered Nurse Level 1 PP1	28.2503	32.2053	33.1715	34.1666
NR13	Registered Nurse Level 1 PP2	31.1428	33.9457	34.9641	36.0130
NR15	Registered Nurse Level 1 PP3	34.2267	36.2803	37.3687	38.4898
NR17	Registered Nurse Level 1 PP4	37.5245	38.6502	39.8097	41.0040
NR18	Registered Nurse Level 1 PP5	38.9876	40.1573	41.3620	42.6028
NR41	Registered Nurse Level 4 Gr1	43.9624	45.2812	46.6397	48.0389
NR42	Registered Nurse Level 4 Gr2	45.7744	47.1477	48.5621	50.0190
NR43	Registered Nurse Level 4 Gr3	47.3389	48.7591	50.2218	51.7285
NR56	Registered Nurse Level 5	58.5377	60.2938	62.1027	63.9657

#### Schedule 4 – ALLOWANCES

Item No.	Description	Per	FFPP 1.07.18 (Current)	FFPP 1.07.19	FFPP 1.07.20	FFPP 1.07.21
1	Overtime: more than one hour after normal finishing time	Meal	13.5736	13.9808	14.4003	14.8323
2	Overtime: each four hours thereafter	Meal	12.6170	12.9955	13.3853	13.7869
3	Vehicle Allowance	km	0.8666	ATO	ATO	ATO
4	Uniform	Per Hour	0.3614	0.3722	0.3834	0.3949
5	Uniform	Week	13.7312	14.1431	14.5674	15.0045
6	Laundry	Per Hour	0.1415	0.1457	0.1501	0.1546
7	Laundry	Week	5.3687	5.5297	5.6956	5.8665
8	On call: Monday to Friday	Period	22.1377	22.8019	23.4859	24.1905
9	On call: Saturday	Period	33.3619	34.3627	35.3936	36.4554
10	On call: Sunday	Period	38.9142	40.0817	41.2841	42.5226
11	RN on call : During meal break	Period	12.2749	30 minutes @ ordinary rate		
12	Broken Shift: Aged Care Classifications only	Shift	30 minutes @ ordinary rate			
13	Medication Allowance: refer clause 21.6	Per hour	1.0031	1.0331	1.0641	1.0961
14	Tool Allowance	Max per week	NA	11.7935	12.1473	12.5117
15	Tool Allowance	Per hour	NA	0.309	0.3183	0.3278