



# DECISION

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

**Catholic Commission for Employment Relations**  
(AG2014/9570)

## **MERCY SERVICES (NURSES) SINGLETON AGED CARE FACILITY ENTERPRISE AGREEMENT 2014-2015.**

Health and welfare services

DEPUTY PRESIDENT BOOTH

SYDNEY, 25 NOVEMBER 2014

*Application for approval of the Mercy Services (Nurses) Singleton Aged Care Facility  
Enterprise Agreement 2014-2015.*

[1] An application has been made for approval of an enterprise agreement known as the *Mercy Services (Nurses) Singleton Aged Care Facility Enterprise Agreement 2014-2015* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Catholic Commission for Employment Relations. The agreement is a single-enterprise agreement.

[2] The New South Wales Branch of the Australian Nursing and Midwifery Federation and the New South Wales Nurses and Midwives' Association, 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) of the Act, I note that the Agreement covers these organisations.

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

[4] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 2 December 2014. The nominal expiry date of the Agreement is 30 June 2015.



DEPUTY PRESIDENT

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# **Mercy Services (Nurses) Singleton Aged Care Facility Enterprise Agreement 2014-2015**

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### **1 - Title**

This Agreement shall be known as '*Mercy Services (Nurses) Singleton Aged Care Facility Enterprise Agreement 2014-2015*' and throughout is referred to as the 'Agreement'.

### **2 - Coverage of the Agreement**

**2.1** This Agreement covers and applies to:

- (a) Mercy Services of 32 Union St, Tighes Hill NSW 2297 ('the Employer');
- (b) New South Wales Nurses and Midwives' Association Australian Nursing and Midwifery Federation – NSW Branch of 50 O'Dea Avenue Waterloo NSW 2017 ('the Union');
- (c) Employees who are employed by the Employer, and who perform work at the Mercy Services Singleton Aged Care Facility of 24 Combo Lane, Singleton NSW 2330 ('the Employer') and who also perform work within the classifications prescribed by clause 7 of this Agreement.

**2.2** For the avoidance of doubt, this Agreement shall not apply to:

- (a) Employees who are not employed as nurses, such as cooks, kitchen hands, cleaning, laundry and administration staff.
- (b) Employees who are not employed to work at the Mercy Services Singleton Aged Care Facility of 24 Combo Lane Singleton.
- (c) Employees who are employed in the position of Director of Care, or other equivalent management position.

### **3 - Term, Operation & Scope**

**3.1** This Agreement commences seven (7) days after the Fair Work Commission approves the Agreement and shall nominally expire on 30 June 2015.

#### **Relationship between the National Employment Standards and this Agreement**

**3.2** The National Employment Standards of the *Fair Work Act 2009* (Cth) as amended or replaced, apply to employees covered by this Agreement, except where this Agreement provides for a more favourable outcome for an employee in a particular respect.

**3.3** This Agreement rescinds and replaces all other formal or informal agreements between the Employer and the employees in the past.

### **4 - No Extra Claims**

**4.1** It is a term of this Agreement that the Union will not make or pursue any extra claims in relation to wages or conditions of employment until 30 June 2015.

## **5 - Definitions**

**"Act"** means the *Fair Work Act 2009* (Cth), as amended or replaced from time to time.

**"Base rate of pay"** means the rate of pay payable to the employee for his or her ordinary hours of work, but not including any of the following:

- (a) incentive-based payments and bonuses;
- (b) loadings;
- (c) monetary allowances, except for the Team Leader Allowance prescribed by clause 11.3, which is included as part of the base rate of pay for those eligible.
- (d) overtime or penalty rates;
- (e) any other separately identifiable amounts.

**"Casual"** refer to clause 6.4(a).

**"Full-time"** refer to clause 6.2.

**"NES"** means the National Employment Standards of the *Fair Work Act 2009* (Cth), as amended or replaced from time to time.

**"Part-time"** refer to clause 6.3(a) and (b).

**"Registered Nurse"** means a person registered by the Nursing and Midwifery Board of Australia, or its successor, as a Registered Nurse.

**"Standard rate"** for the purpose of the on call allowance prescribed by clause 11.6, is the same standard rate as prescribed by the *Nurses Award 2010*, as amended or replaced from time to time.

**"the parties"** refers to the Employer and the Union covered by this Agreement.

## **Part B – Classification, Remuneration & Related Matters**

### **6 - Types of Employment**

#### **6.1 Employment categories**

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

- Full-time;
- Part-time; or
- Casual.

At the time of engagement the Employer will inform each employee whether they are employed on a full-time, part-time or casual basis. The Employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

#### **6.2 Full-time employment**

A full-time employee is one who is engaged to work 38 hours per week or an average of 38 hours per week pursuant to clause 12.1 of this Agreement.

#### **6.3 Part-time employment**

- (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.
- (c) The terms of the agreement may be varied by consent and recorded in writing.
- (d) The terms of this Agreement will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.

#### **6.4 Casual employment**

- (a) A casual employee is an employee engaged as such on an hourly basis.
- (b) A casual employee will be paid an hourly base rate of pay equal to 1/38th of the weekly rate which applies to the employee's classification, plus a casual loading of 25%.
- (c) A casual employee will be paid a minimum of two hours pay for each engagement.
- (d) Where a casual employee may be entitled to a particular shift penalty or allowance, such penalty or allowance will be calculated on the base rate of pay excluding the casual loading, with the casual loading then added to the rate of pay after the penalty or allowance is applied.

## **7 – Classifications**

### **7.1 Assistant in Nursing**

**Assistant in Nursing (AIN)** means an employee, other than one registered with the Nursing and Midwifery Board of Australia or its successor or one who is in training for the purpose of such registration, who is under the direct control and supervision of a Registered Nurse (RN) or Enrolled Nurse (EN) and whose employment is solely to assist an RN or EN in the provision of nursing care to persons.

**Nursing care** means:

- giving assistance to a person who, because of disability, is unable to maintain their bodily needs without frequent assistance;
- carrying out tasks which are directly related to the maintenance of a person's bodily needs where that person because of disability is unable to carry out those tasks for themselves; and/or
- assisting a Registered Nurse or Enrolled Nurse to carry out the work described in clause 7.2.
- For the purposes of this Agreement nursing care also includes care provided by midwives.

### **7.2 Enrolled Nurse**

#### **7.2.1 Enrolled Nurse - pay point 1**

- (a) Pay point 1 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed based on training and experience including:
  - having satisfactorily completed a hospital based course of training in nursing of not more than 12 months duration leading to enrolment as an EN; or
  - having satisfactorily completed a course of training of 12 months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by the Nursing and Midwifery Board of Australia or its successor; and
  - having practical experience of up to but not more than 12 months in the provision of nursing care and/or services, and, the undertaking of in-service training, subject to its provision by the employing agency, from time to time.
- (c) Skill indicators:
  - The employee has limited or no practical experience of current situations; and



- The employee exercises limited discretionary judgment, not yet developed by practical experience.

#### **7.2.2 Enrolled Nurse - pay point 2**

(a) Pay point 2 refers to the pay point to which an EN has been appointed.

(b) An employee will be appointed to this pay point based on training and experience including:

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

(c) Skill indicators:

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

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

#### **7.2.3 Enrolled Nurse - pay point 3**

(a) Pay point 3 refers to the pay point to which an EN has been appointed.

(b) An employee will be appointed to this pay point based on training and experience including:

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

(c) Skill indicators:

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

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

#### **7.2.4 Enrolled Nurse - pay point 4**

(a) Pay point 4 refers to the pay point to which an EN has been appointed.

(b) An employee will be appointed to this pay point based on training and experience including:

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

(c) Skill indicators:

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

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

#### **7.2.5 Enrolled Nurse - pay point 5**

(a) Pay point 5 refers to the pay point to which an EN has been appointed.

(b) An employee will be appointed to this pay point based on training and experience including:

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

(c) Skill indicators:

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

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

Note: For Registered Nurses refer to Clause 5 – Definitions.

## **8 – Rates of Pay**

### **8.1 Assistants in Nursing & Enrolled Nurses**

Employees employed in the classifications of Assistant in Nursing or Enrolled Nurse, will be paid in accordance with the Rates of Pay Table prescribed below in clause 8.4.

### **8.2 Team Leaders**

An Assistant in Nursing ('AIN') or Enrolled Nurse ('EN') who is also engaged as a Team Leader or Supervisor, will receive the same rate of pay as an employee of their classification who is not a Team Leader or Supervisor, however they will be eligible to receive the Team Leader Allowance, if they meet the requirements outlined in clause 11.3.

### **8.3 Registered Nurses**

The base rates of pay for Registered Nurses will be equivalent to those paid to Registered Nurses covered by the *Public Health System Nurses' and Midwives' (State) Award 2011*.

#### **8.4 Rates of Pay Table**

*Effective from the first full pay period on or after 1 July 2014*

<b>Classification</b>	<b>Base Rate of Pay</b>	<b>Weekly Rate</b>
<b><u>Assistant in Nursing</u></b>	\$	\$
Year 1	20.4249	776.1462
Year 2	20.7545	788.6710
Year 3	20.7751	789.4538
Thereafter	21.1665	804.3270
<b><u>Enrolled Nurse</u></b>		
Pay point 1	21.5167	817.6346
Pay point 2	21.8051	828.5938
Pay point 3	22.0729	838.7702
Pay point 4	22.4025	851.2950
Pay point 5	26.5534	1,009.0292
<i>For Registered Nurses see clause 8.3 above</i>		

#### **8.5 Progression through pay points**

Progression for all classifications for which there is more than one pay point or year level, will be by annual movement to the next pay point or year level, or in the case of a part-time or casual employee 1786 hours of experience, having regard to the acquisition and use of skill described in the definitions contained in Clause 7 – Classifications, and knowledge gained through experience in the practice settings over such a period.

### **9 - Payment of Wages**

- 9.1** Wages must be paid fortnightly unless otherwise mutually agreed up to a monthly maximum period.
- 9.2** Employees will be paid by cash, cheque or electronic funds transfer, as determined by the Employer, into the bank or financial institution account nominated by the employee.
- 9.3** When notice of termination of employment has been given by an employee or the Employer, payment of all wages and other monies owing to an employee will be made to the employee.

## **10 - Superannuation**

**10.1** The Employer will pay superannuation contributions to employees in accordance with its obligations under superannuation legislation. Such contributions will be made to:

- (a) *Health Employees Superannuation Trust of Australia ('HESTA')*, which at the time of making this Agreement will act as the default superannuation fund nominated by the Employer, or alternatively;
- (b) any superannuation fund to which the Employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or
- (c) any other superannuation fund nominated by the employee and approved by the Employer.

### **10.2 Voluntary employee contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise the Employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the Employer makes the superannuation contributions provided for in clause 10.1.
- (b) An employee may adjust the amount the employee has authorised their Employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to the Employer.
- (c) The Employer must pay the amount authorised under clauses 10.2(a) or 10.2(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 1.1(a) or 10.2(b) was made.

## **Part C – Allowances**

### **11 – Allowances**

#### **11.1 Medication Allowance – Assistant in Nursing and Enrolled Nurses**

- (a) The Employer may, at its discretion, appoint an Assistant in Nursing ('AIN') to assist administer medication to residents. Where an AIN has been so appointed, the AIN shall receive the Medication Allowance of \$1 per hour, payable for each shift where the following requirements are satisfied:
  - (i) The AIN has been advised in advance by their manager, or relevant member of the management team, that they have been specifically appointed to assist administer medication to residents before completing this task; and

- (ii) After an AIN completed this task on a particular shift, they have recorded it in a timesheet or other method of record keeping put in place by the Employer.
- (b) The Employer may also, at its discretion, appoint an Enrolled Nurse ('EN') to assist administer medication to residents in circumstances where the EN is not yet formally endorsed for this purpose. Where an EN is so appointed, they shall receive the same Medication Allowance as referred to in clause 11.1(a) and which will be subject to the same requirements prescribed by paragraphs 11.1(a)(i) and (ii).

## **11.2 Continuing Education Allowance**

(a) A Registered Nurse ('RN') or Enrolled Nurse ('EN') other than a casual employee, who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration or enrolment, shall be paid the applicable allowance prescribed below in paragraphs (i) to (iv), subject to the conditions, requirements and exclusions set out in clauses 11.2(b), (c) and (d):

- (i) An RN who holds a relevant postgraduate certificate in a clinical field (not including a hospital certificate) that is accepted by the Employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of their position, shall be paid a weekly allowance of \$18.08.
  - (ii) An RN who holds a relevant postgraduate diploma or degree in a clinical field (other than a nursing undergraduate degree) that is accepted by the Employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of their position, shall be paid a weekly allowance of \$30.12.
  - (iii) An RN who holds a relevant master's degree or doctorate in a clinical field that is accepted by the Employer to be directly relevant to the competency and skills used by the RN in carrying out the duties of their position, shall be paid a weekly allowance of \$36.13.
  - (iv) An EN who holds a relevant certificate IV qualification in a clinical field (not including a certificate IV qualification which has the effect of upgrading the qualification leading to enrolment) that is accepted by the Employer to be directly relevant to the competency and skills used by the EN in carrying out the duties of their position, shall be paid a weekly allowance of \$12.04.
- (b) The employee must apply for the allowance.

Continuing education qualification already held by the employee:

- (i) Where an employee already holds the relevant continuing education qualification and wishes to apply to receive one of the allowances prescribed in clause 11.2(a), they must provide to the Employer satisfactory written evidence of this qualification in order to be eligible.

- (ii) The Employer must then assess the application and advise the employee in writing if they have been deemed eligible, and if so, for which continuing education allowance.

Pre-approval required before or during study:

- (iii) If an RN or EN wishes to apply for a continuing education allowance, but they have not yet commenced study towards that qualification, or have commenced study but have not yet completed and been awarded the qualification, they must first apply in writing to the Employer.
- (iv) The employee must advise the name of the course / qualification, the institution, the duration of the course, and an explanation of how the employee believes the qualification will be directly relevant to the competencies and skills used in their position.

(c) Other conditions and requirements:

- (i) Eligibility to receive the applicable allowance only occurs after the relevant qualification is completed and awarded, not during the period of study towards that qualification.
- (ii) Employees who apply to receive an allowance under clause 11.2(a), and are approved, will be paid the allowance from the first full pay period on or after the date of application in writing to the Employer.
- (iii) An RN or EN holding more than one continuing education qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value they are eligible for.
- (iv) A RN or EN who is employed on a part-time basis shall be paid the applicable allowance on a pro rata basis.
- (v) The allowances prescribed in paragraphs 11.2(a)(i) to (iv), are not included in the employee's base rate of pay.

(d) Exclusions from the continuing education allowance:

- (i) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- (ii) The allowance is not payable to casual employees.

(e) Where a disagreement or dispute arises concerning the eligibility of an employee for payment of a continuing education allowance, the procedures of Clause 28 - Dispute Resolution shall apply.

### **11.3 Team Leader Allowance**

Any Assistant in Nursing or Enrolled Nurse with the added responsibility of being specifically appointed by the Employer as a Team Leader or Supervisor, shall receive the Team Leader



Allowance of \$1 per hour worked, provided that the employee, in addition to their supervisory role;

- (a) holds a Certificate III in Aged Care Work or other qualifications or experience deemed suitable by the Employer; and
- (b) has demonstrated initiative and positive leadership qualities in the performance of their duties; and
- (c) possesses strong written and verbal communication skills; and
- (d) possesses strong organisational skills.

#### **11.4 Clothing and Equipment**

- (a) Employees required by the Employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to employees. Such items are to remain the property of the Employer and be laundered and maintained by the Employer free of cost to the employee.
- (b) Instead of the provision of such uniforms, the Employer may pay such employee a uniform allowance at the rate of \$1.23 per shift or part thereof on duty or \$6.24 per week, whichever is the lesser amount. Where such employee's uniforms are not laundered by or at the expense of the Employer, the employee will be paid a laundry allowance of \$0.32 per shift or part thereof on duty or \$1.49 per week, whichever is the lesser amount.
- (c) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.

#### **11.5 Meal Allowances**

- (a) An employee will be supplied with an adequate meal where the Employer has adequate cooking and dining facilities or be paid a meal allowance of \$11.96 in addition to any overtime payment as follows:
  - (i) when required to work overtime after the usual finishing hour of work beyond one hour or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour.
  - (ii) provided that where such overtime work exceeds four hours a further meal allowance of \$10.77 will be paid.
- (b) Clause 11.5(a) will not apply when an employee could reasonably return home for a meal within the meal break.
- (c) On request the meal allowance will be paid on the same day as overtime is worked.



#### **11.6 On Call Allowance**

(a) An on call allowance is paid to an employee who is required by the Employer to be on call at their private residence, or at any other mutually agreed place. The employee is entitled to receive the following additional amounts for each 24 hour period or part thereof:

- between rostered shifts or ordinary hours of work Monday to Friday inclusive - 2.35% of the standard rate;
- between rostered shifts or ordinary hours of work on a Saturday - 3.54% of the standard rate; or
- between rostered shifts or ordinary hours of work on a Sunday, public holiday or any day when the employee is not rostered to work - 4.13% of the standard rate.

(b) For the purpose of this clause the whole of the on call period is calculated according to the day on which the major portion of the on call period falls.

#### **11.7 Travelling, transport and fares**

(a) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of not less than \$0.78 per kilometre.

(b) When an employee is involved in travelling on duty, if the Employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the Employer on production of receipted account(s) or other evidence acceptable to the Employer.

(c) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 11.7(b) which exceed the mode of transport, meals or the standard of accommodation agreed with the Employer for these purposes.

#### **11.8 Higher duties**

(a) An employee, who is required to relieve another employee in a higher classification than the one in which they are ordinarily employed, will be paid at the higher classification rate for the period, provided the relieving is for three days or more.

## **Part D – Hours of Work**

### **12 - Ordinary Hours of Work**

- 12.1** The ordinary hours of work for a full-time employee will be 38 hours per week, 76 hours per fortnight or 152 hours over a period of 28 calendar days as determined by the Employer.
- 12.2** The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.
- 12.3** The ordinary hours of work for a day worker will be between the span of hours, which are 6am to 6pm Monday to Friday inclusive. However, this span of hours does not apply to the ordinary hours of work of a shiftworker, who is defined as an employee who is regularly rostered to work outside of 6am to 6pm Monday to Friday inclusive.
- 12.4** An accrued day off (ADO) system of work may be implemented at the discretion of the Employer, via an employee working no more than 19 days in a four week period of 152 hours.
- 12.5** The hours of work will be continuous, except for meal breaks. Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

### **13 – Rostering & Breaks**

#### **13.1 Rostering requirements**

- (a) Employees will work in accordance with a weekly or fortnightly roster fixed by the Employer.
- (b) The roster will set out employees' daily ordinary working hours and starting and finishing times and will be displayed in a place conveniently accessible to employees at least seven days before the commencement of the roster period.
- (c) Unless the Employer otherwise agrees, an employee desiring a roster change will give seven days notice except where the employee is ill or in an emergency.
- (d) Seven days notice of a change of roster will be given by the Employer to an employee. Except that, a roster may be altered at any time to enable the functions of the facility to be carried out where another employee is absent from work due to illness or in an emergency. Where any such alteration requires an employee working on a day which would otherwise have been the employee's day off, the day off instead will be as mutually arranged.

#### **13.2 Rest breaks between rostered work**

An employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift.

### **13.3 Accumulation and taking of accrued days off**

- (a) Where an employee is entitled to an ADO, in accordance with clause 12.4, ADOs will be taken within 12 months of the date on which the first full ADO accrued.
- (b) With the consent of the Employer, ADOs may be accumulated up to a maximum of five in any one year.
- (c) An employee will be paid for any accumulated ADOs, at ordinary rates, on the termination of their employment for any reason.

### **13.4 Meal breaks**

- (a) An employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes.
- (b) Where an employee is required to remain available or on duty during a meal break, the employee will be paid overtime for all time worked until the meal break is taken.

### **13.5 Tea breaks**

- (a) Every employee will be entitled to a paid 10 minute tea break in each four hours worked at a time to be agreed between the employee and Employer.
- (b) Subject to agreement between the Employer and employee, such breaks may alternatively be taken as one 20 minute tea break.
- (c) Tea breaks will count as time worked.

## **14 – Shiftwork**

### **14.1 Afternoon shift penalty**

- (a) For the purposes of this clause, 'afternoon shift' means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day.
- (b) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a penalty of 12.5% of their base rate of pay.

### **14.2 Night shift penalty**

- (a) For the purpose of this clause, 'night shift' means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day.
- (b) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a penalty of 15% of their base rate of pay.

### **14.3 Saturday penalty**

Where an employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the employee will be paid a penalty of 50% of their base rate of pay for the hours worked during this period.

#### **14.4 Sunday penalty**

Where an employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday, the employee will be paid a penalty of 75% of their base rate of pay for the hours worked during this period.

#### **14.5 Shift penalties and Overtime are not cumulative**

- (a) Each of the shift penalties prescribed within this clause (i.e afternoon shift penalty, night shift penalty, Saturday penalty and Sunday penalty) are not cumulative. An employee can only be eligible for one of these penalties at any given time during a particular shift.
- (b) Where an employee becomes entitled to the Saturday penalty or Sunday penalty, such weekend penalty will be applied to the exclusion of the afternoon shift penalty and the night shift penalty prescribed above at clause 14.1 and 14.2.
- (c) Where an employee becomes entitled to payment for overtime in accordance with clause 15, the applicable overtime penalty applies at the relevant time to the exclusion of the shift penalties prescribed within this clause.

### **15 - Overtime**

#### **15.1 Overtime penalty rates**

Hours worked in excess of the ordinary hours of work on any day or shift as prescribed by clause 12 - Ordinary Hours of Work, are to be paid as follows:

- (i) Monday to Saturday (inclusive) - time and a half for the first two hours and double time thereafter;
- (ii) Sunday - double time; and
- (iii) Public holidays - double time and a half.

#### **15.2 Overtime rates and shift penalties are not cumulative**

Overtime rates under this clause will be in substitution for and not cumulative upon the shift penalties prescribed by Clause 14 – Shiftwork.

#### **15.3 Part-time employees**

All time worked by part-time employees in excess of the rostered daily ordinary full-time hours will be overtime and will be paid as prescribed in clause 15.1.

#### **15.4 Time off instead of payment for overtime**

- (a) By agreement between the Employer and employee, an employee may take time off instead of receiving payment for overtime at a mutually agreed time.
- (b) The employee may take one hour of time off for each hour of overtime plus a period of time equivalent to the overtime penalty incurred.

### **15.5 Rest period after overtime**

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

### **15.6 Rest break during overtime**

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

### **15.7 Recall to work when on call**

An employee, who is required to be on call and who is recalled to work, will be paid for a minimum of three hours work at the appropriate overtime rate.

### **15.8 Recall to work when not on call**

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

## **Part E – Leave Provisions**

### **16 - Annual Leave**

**16.1** Annual leave is provided for in the NES. This clause contains additional provisions.

**16.2 Quantum of annual leave**

(a) In addition to the entitlements in the NES, an employee is entitled to an additional week of annual leave on the same terms and conditions.

(b) For the purpose of the additional weeks annual leave provided by the NES, a shiftworker is defined as an employee who:

(i) is regularly rostered over seven days of the week; and

(ii) regularly works on weekends.

(c) To avoid any doubt, this means that an employee who is not a shiftworker for the purposes of clause 16.2(b) above is entitled to five weeks of paid annual leave for each year of service with the Employer, and an employee who is a shiftworker for the purposes of clause 16.2(b) above is entitled to six weeks of paid annual leave for each year of service with the Employer.

**16.3 Taking of leave**

Annual leave will be given and taken within six months of the employee becoming entitled to annual leave of more than five weeks.

**16.4 Payment for annual leave**

Employees will be paid for approved periods of annual leave in accordance with the Employer's regular pay cycle, unless an employee requests payment before the leave commences and this request is agreed to by the Employer.

**16.5 Annual leave loading**

(a) In addition to their base rate of pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their base rate of pay on a maximum of 152 hours/four weeks annual leave per annum.

(b) Shiftworkers, as defined by clause 16.2(b), in addition to their base rate of pay, will be paid the higher of:

(i) an annual leave loading of 17.5% of the base rate of pay; or

(ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

**16.6 Payment of annual leave on termination**

On the termination of their employment, an employee will be paid their untaken annual leave.

**17 - Ceremonial Leave**



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

## **18 - Personal/Carers Leave & Compassionate Leave**

Personal/carer's leave and compassionate leave are provided for in the NES.

## **19 - Parental Leave**

Parental leave is provided for in the NES.

## **20 - Community Service Leave**

Community service leave is provided for in the NES.

## **21 - Public holidays**

**21.1** Public holidays are provided for in the NES. This clause contains additional provisions.

### **21.2 Payment for work done on public holidays**

(a) All work done by an employee as required by the Employer on a public holiday, including a substituted day in accordance with clause 21.3, will be paid at double time of their base rate of pay.

(b) Work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of 50% of the employee's base rate of pay for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of 50% of the base rate of pay for the hours worked on that day instead of the rate referred to in clause 21.2(a).

### **21.3 Public holiday substitution**

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

### **21.4 Public holidays occurring on rostered days off**

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

### **21.5 Accrued days off on public holidays**

Where an employee's accrued day off falls on a public holiday, another day, determined by the Employer, will be taken instead within the same four or five week work cycle, where practical.

## **21.6 Additional leave days by mutual agreement**

- (a) In lieu of being paid double time under clause 21.2, where the Employer and employee mutually agree in writing at the time the public holiday is worked, an employee may be paid their base rate of pay for time worked on a public holiday and have the same number of hours worked accrued, to be taken as leave, including in conjunction with a period of annual leave.
- (b) Payment for any days taken as leave, accrued in accordance with clause 21.6(a) shall be at the employee's base rate of pay, excluding shift and/or weekend penalties and annual leave loading.
- (c) The taking of any additional days accrued as leave in accordance with 21.6(a) shall be by mutual agreement between the Employer and employee, provided that such agreement shall not be unreasonably withheld.
- (d) Any untaken additional days accrued as leave in accordance with clause 21.6(a) shall be paid out to the employee upon termination of employment.
- (e) Provided that any additional days accrued as leave in accordance with clause 21.6(a) shall not be considered annual or personal/carer's leave for any purpose.

## **Part F - Termination of Employment**

### **22 - Termination**

**22.1** Notice of termination is provided for in the NES.

#### **22.2 Notice of termination by an employee**

The notice of termination required to be given by an employee is the same as that required of the Employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned. If an employee fails to give the required notice the Employer may withhold from any monies due to the employee on termination under this Agreement or the NES, an amount not exceeding the amount the employee would have been paid under this Agreement in respect of the period of notice required by this clause, less any period of notice actually given by the employee.

#### **22.3 Job search entitlement**

Where the Employer has given notice of termination to an employee, an employee must be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the Employer.

### **23 – Redundancy**

**23.1** Redundancy pay is provided for in the NES.



### **23.2 Transfer to lower paid duties**

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the Employer may, at the Employer's option, make payment instead of an amount equal to the difference between the former base rate of pay and the base rate of pay, for the number of weeks of notice still owing.

### **23.3 Employee leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.

### **23.4 Job search entitlement**

- (a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the Employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.
- (c) This entitlement applies instead of clause 22.3.

## **Part G – Workplace Flexibility, Consultation & Dispute Resolution**

### **24 - Flexibility Term**

**24.1** The Employer and an employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of this enterprise agreement if:

- (a) the arrangement deals with one or more of the following matters:
  - (i) arrangements about when work is performed;
  - (ii) overtime rates;
  - (iii) penalties;
  - (iv) allowances;
  - (v) leave loading; and

- (b) the arrangement meets the genuine needs of the Employer and the 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 the employee.

**24.2** The Employer must ensure that the terms of the individual flexibility arrangement:

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

**24.3** The Employer must ensure that the individual flexibility arrangement:

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

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

**24.5** The Employer or employee may terminate the individual flexibility arrangement:

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

## **25 - Casual Conversion**

**25.1** 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.

### **Casual conversion**

**25.2** 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 hours equivalent to a full-time employee throughout the period of casual employment; or
- (b) on a permanent part-time contract where the employee has worked hours equivalent to a permanent part-time employee. Such contract would be on the basis of the same number of hours as previously worked, unless other arrangements are agreed between the Employer and the employee.

**25.3** The employee must set out the details of the request in writing.

**25.4** The Employer may refuse the request, but only on reasonable business grounds.

**25.5** Without limiting what are reasonable business grounds for the purposes of clause 25.4, reasonable business grounds may include the request:

- (a) resulting in an unacceptable increase in fixed labour costs;
- (b) posing a significant risk of compromising standards of care and/or operational performance through reduced rostering flexibility;
- (c) resulting in an inadequate pool of necessary casual staff to meet surplus labour requirements;
- (d) being impractical given the established working arrangements of other staff, or given limits in the employee's availability to perform the required hours as notified in the employee's written request.

**25.6** In assessing each request, the Employer may also have regard to the following:

- (a) the employee's standard of performance and behaviour;
- (b) the financial and budgetary circumstances of the Employer at the time, including consideration of occupancy rates and revenue levels.

**25.7** Casual conversion will not apply where a casual employee has covered absences of permanent staff that are expected to return to work.

## **26 - Maintenance of Registration**

**26.1** The parties to this Agreement acknowledge the regulatory framework of the aged care industry and in particular, the vital importance of Nurses maintaining their registration as a term of their employment and to ensure high levels of patient care are achieved.

**26.2** To this end, Mercy Services will support Registered and Enrolled Nurses in maintaining their registration by providing internal training opportunities.

**26.3** Individual employees will also take ownership for their own professional development in the course of their employment.

**26.4** In this regard, the parties acknowledge the common interest and mutual responsibility which exists in ensuring registration requirements are met and maintained.

## **27 - Consultation**

**27.1** This clause 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 workplace change**

**27.2** For a major change referred to in clause 27.1(a):

- (a) the Employer must notify the relevant employees of the decision to introduce the major change; and
- (b) clauses 27.3 to 27.9 apply.

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

**27.4** 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.

**27.5** 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.

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

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

**27.8** 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 clauses 27.2, 27.3 and 27.5 are taken not to apply.

**27.9** In this clause, a major change is ***likely to have a significant effect on employees*** if it results in:

- (a) the termination of the employment of employees; or
- (b) major change to the composition, operation or size of the Employer's workforce or to the skills required of employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain employees; or
- (f) the need to relocate employees to another workplace; or
- (g) the restructuring of jobs.

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

**27.10** For a change referred to in clause 27.1(b):

- (a) the Employer must notify the relevant employees of the proposed change; and
- (b) clauses 27.11 to 27.15 apply.

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

**27.12** 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.

**27.13** 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).

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

**27.15** The Employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.

**27.16** In this term:

**"relevant employees"** means the employees who may be affected by a change referred to in clause 27.1.

## **28 - Dispute Resolution**

**28.1** In the event of a dispute about a matter under this Agreement, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.

**28.2** If a dispute about a matter arising under this Agreement or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 28.1 have been taken, a party to the dispute may refer the dispute to the Fair Work Commission.

**28.3** The parties may agree on the process to be utilised by the Fair Work Commission including mediation, conciliation and consent arbitration.

- 28.4** Where the matter in dispute remains unresolved, the Fair Work Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute, except arbitration which will require the consent of the parties to the dispute at the time that any potential dispute arises in future.
- 28.5** The Employer or employee may appoint another person, organisation or association to accompany and/or represent them for the purposes of this clause.
- 28.6** While the dispute resolution procedure is being conducted, work must continue in accordance with this Agreement and the Act. Subject to applicable occupational 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.

## **Part H - Signatories to the Agreement**

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**EXECUTED** as an agreement.

**SIGNED** for and on behalf of Mercy Services (the Employer)

by Mr Roy Hambly of 32 Union St, Tighes Hill, NSW 2297

in his capacity as General Manager Mercy Services, and as an authorised officer of the Employer



Signature of authorised officer

9th October 2014

Date of signature

Signed in the presence of:



Signature of witness

Eileen Tobin

Name of witness



*Brett Holmes*

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

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

*Margaret Potts*

WITNESS

Margaret Mary Potts  
50 O'Dea Ave, Waterloo

*Coral Vicky Levett*

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

President  
Australian Nursing 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 34 of the Rules of the New South Wales Nurses and Midwives' Association and Rule 40 of the Rules of the Australian Nursing Federation and as bargaining representative in accordance with the Fair Work Act 2009.*