



## DECISION

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

**New Horizons Enterprises Limited T/A New Horizons Enterprises Limited**  
(AG2019/4312)

### **NEW HORIZONS AGED CARE AND NSWNMA/ANMF ENTERPRISE AGREEMENT 2018-2021**

Aged care industry

DEPUTY PRESIDENT YOUNG

MELBOURNE, 13 DECEMBER 2019

*Application for approval of the New Horizons Aged Care and NSWNMA/ANMF Enterprise Agreement 2018-2021.*

[1] New Horizons Enterprises Limited (the Employer) has made an application for approval of an enterprise agreement known as the *New Horizons Aged Care and NSWNMA/ANMF Enterprise Agreement 2018-2021* (the Agreement) pursuant to s 185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] The Employer has provided written undertakings. A copy of the undertakings is attached at Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and the undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the agreement.

[3] Subject to the undertakings referred to above, and on the basis of the material contained in the application, and the accompanying statutory declaration, I am satisfied that each of the requirements of ss 186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] The Australian Nursing and Midwifery Federation, being a bargaining representative for the Agreement, has given notice under s 183 of the Act that it seeks to be covered by the Agreement. In accordance with s 201(2) and based on the statutory declaration provided by the organisation, I note that the Agreement covers the organisation.

[5] The Agreement was approved on 13 December 2019 and, in accordance with s 54, will operate from 20 December 2019. The nominal expiry date of the Agreement is 30 June 2021.



DEPUTY PRESIDENT

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## Annexure A

### IN THE FAIR WORK COMMISSION

**FWC Matter No.:**  
AG2019/4312

**Applicant:**

NEW HORIZONS ENTERPRISES LIMITED

Section 185 – Application for approval of a single enterprise agreement

## Undertaking- Section 190

I, Peter Carter, Chief Executive Officer for New Horizons Enterprises Limited give the following undertakings with respect to the *New Horizons Aged Care and NSWNMA/ANMF Enterprise Agreement 2018-2021* ("the Agreement"):

1. I have the authority given to me by New Horizons Enterprises Limited to provide this undertaking in relation to the application before the Fair Work Commission.
2. In relation to subclause 18.2, I undertake that the subclause will be deleted and replaced with the following:
  - 18.2 Home Care Employees shall be paid the following penalties, calculated on their ordinary pay, for shifts rostered in accordance with the following:
    - (a) Shift penalties:
      - (i) 10% for afternoon shift commencing at 10:00am and before 1:00pm.
      - (ii) 12.5% for afternoon shift commencing at 1pm and before 4pm.
      - (iii) 15% for night shift commencing at 4pm and before 4am.
    - (b) Home Care Employees who work less than 38 hours per week will only be entitled to the shift penalties set out in subclause 18.2(a)(i) to (iii) above where their shift commences prior to 6:00am or finishes after 6:00pm.
    - (c) 150% for ordinary hours worked between midnight Friday and midnight Saturday; and
    - (d) 175% for ordinary hours worked between midnight Saturday and midnight Sunday.
    - (e) The weekend penalty rates in set out in subclause 18.2(c) and (d) will be in substitution for and not cumulative on the shift penalties as set out in subclause 18.2(a).
    - (f) An employee who is required to and does work on any public holiday shall be paid, in lieu of all other shift penalties, weekend penalties, casual loading, as follows:
      - (i) Full-time employees – in addition to their ordinary pay, an additional payment equal to 150% for hours worked. Alternatively, if the employee elects, the same number of hours worked added to their annual leave.

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- (ii) Part-time employees – in addition to their ordinary pay, an additional payment equal to 150% for hours worked. Alternatively, if the employee elects, the same number of hours worked added to their annual leave.
  - (iii) Casual employees – 250% for hours worked.
3. In relation to subclause 39.4(h), I undertake that where a part-time and casual employee is required to attend training where the circumstances in subclauses 17.1(b) and 17.1(c) of the Agreement applies, they will be paid overtime rates in accordance with subclause 17.2 of the Agreement.
4. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



**Signature**

5 December 2019

**Date**

**Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of the agreement.**



*AgedCare*

*New Horizons Aged Care and –  
NSWNMA/ANMF Enterprise Agreement 2018-  
2021*

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## Part A - Preliminary

### 1. Introduction

- 1.1 This Agreement is made under section 172 of the *Fair Work Act 2009* (Cth).
- 1.2 The employer will take the necessary steps to seek approval of this Agreement under section 186 of the Act
- 1.3 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* (Cth) to be covered by the agreement.
- 1.4 It is the intention of this agreement that the Unions will be covered by this Agreement.

### 2. Title

This Agreement will be known as the New Horizons Aged Care and NSWNMA/ANMF Enterprise Agreement 2018-2021 (“the Agreement”) and is made pursuant to Part 2-4 of the *Fair Work Act 2009* (Cth).

### 3. Parties Bound

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

- (i) New Horizons Enterprises (ABN 42002066604) (“New Horizons” or “employer”);
- (ii) the Australian Nursing and Midwifery Federation NSW Branch (ANMF NSW Branch) (ABN 85 726 054 782), NSW Branch of the ANMF (41 816 898 298) located at 50 O’Dea Avenue, Waterloo, NSW 2017; and
- (iii) all those employees of New Horizons performing work within the classifications contained in this Agreement and employed in a residential aged care facility or home care program run from an aged care facility in NSW.

### 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 2021. The parties agree to recommence negotiations no later than 28 February 2021.

### 6. Definitions

- 6.1 Where a term of this Agreement has a corresponding definition in the Act, the Regulations or the NES, the definition in the Act, the Regulations or the NES shall apply. Any such terms that are also defined in this Agreement are defined for the convenience only of the parties and shall be overridden to the



extent of any inconsistency with the definition found in the Act, the Regulations or the NES.

6.2 For the purposes of this Agreement:

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

“**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, overtime 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 the Australian Health Practitioner Regulation Authority as appropriate/applicable.

“**De facto**” partner means:

- (i) 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
- (ii) includes a former de facto partner of the employee.

“**Employment classifications**” mean those set out in Schedule A to this Agreement and shall apply as if they had been reproduced in full in this clause.

“**FWC**” means Fair Work Commission

“**Immediate Family**” means:

- (i) a spouse (or former spouse), de facto partner (or former de facto partner), child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse, former spouse, former de facto partner 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**” means the regulations associated with the *Fair Work Act 2009* (Cth) (as amended from time to time).

“**Union**” or “**Unions**” means the Australian Nursing and Midwifery Federation (ANMF), of which New South Wales is a Branch (ANMF NSW Branch). The New South Wales Nurses and Midwives' Association (NSWNMA) is the commonly recognized reference in NSW.

**Enrolled Nurse (without medication qualification)** means a nurse enrolled with the Board who has the following notation on their licence: "Does not hold Board-approved qualifications in administration of medications" attached to their enrolment.

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

## 7. Complete Agreement

- 7.1 Other than individual agreements reached in accordance with Clause 8 - Agreement Flexibility, 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, the NES will prevail over the content of this Agreement, to the extent of any inconsistency or omission.

## 8. Agreement Flexibility

- 8.1 An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed;
    - (ii) overtime rates;
    - (iii) penalty rates;
    - (iv) allowances;
    - (v) leave loading; and
  - b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - c) the arrangement is genuinely agreed to by the employer and employee.
- 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
  - (iv) states the day on which the arrangement 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 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.

## **9. National Employment Standards (NES)**

- 9.1 It is the intention of this Agreement that the NES, as it may be varied from time to time, shall apply to the employees the subject of this Agreement. Any provisions of the NES that are also referred to or set out in this Agreement are for the convenience only of the parties.
- 9.2 Where the NES provides, or is varied to provide, a condition or entitlement more favourable (to the employee) in a particular respect than that set out in this Agreement, the condition or entitlement set out in this Agreement shall be overridden to the extent that it is less favourable than the NES.
- 9.3 Where after the commencement of this Agreement, the NES is varied to remove a condition or entitlement referred to or set out in this Agreement, the condition or entitlement referred to or set out in this Agreement shall have no effect.
- 9.4 Where after the commencement of this Agreement, the NES is varied to provide a condition or entitlement less favourable (to the employee) in a particular respect than that referred to or set out in this Agreement, the condition or entitlement referred to or set out in this Agreement shall override to the extent that it is more favourable than the NES as varied.

## **10. Relationships to Policies and Procedures**

- 10.1 This Agreement requires the employees to perform their duties in accordance with the policies and procedures determined by the employer, in place and as varied from time to time. This Agreement does not 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.

- 10.2 The employer expects all employees to demonstrate our values in all that they do. As such, the employer has a zero tolerance approach to Bullying and Harassment in the workplace. All employees are expected to comply with and understand the Positive and Productive Workplace Policy. It is also a requirement for all employees to attend the annual mandatory training. Bullying is defined as repeated incidents of harassment or unreasonable behaviour. Behaviour is considered 'repeated' if it is persistent and an established pattern can be identified. Bullying is considered a significant workplace hazard which poses a risk to the health and safety of employees, and will not be tolerated by the employer.
- 10.3 Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

## **11. 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 B – Engagement**

### **12. Employee Engagement**

#### **12.1 Probationary Period:**

Employees (other than casual employees) will be on a period of probation for the first six months of engagement for the purpose of determining the employee's suitability for ongoing employment.

#### **12.2 Full-time Employees:**

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

#### **12.3 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.
- c) Reasonable additional hours may be worked in accordance with clause 14 - Hours.

#### **Review of Part-time Hours:**

- d) At the request of an employee, the hours worked by the employee will be reviewed annually. 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.

- e) 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, maternity 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 or client.

In addition to those matters covered in sub-clause 12.3(e)(I) changes to hours for Home Care employees may be affected by:

- (i) continuity of funding;
  - (ii) client numbers; and
  - (iii) client preferences for services including their ability to choose particular care workers.
  - (iv) The employer will not unreasonably refuse to change the hours of a Home Care employee based on the circumstances in subclause 12.3(e)(ii) unless there is an imminent change to any of those circumstances.
- f) Any adjusted guaranteed minimum number of hours resulting from a review identified in sub-clause 12.3(d) should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

#### 12.4 Casual Employees

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

- a) 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:
  - (i) on a full-time contract where the employee has worked on a full-time basis throughout the period of casual employment; or
  - (ii) on a part-time contract where the employee has worked on a part-time basis throughout the period of casual employment.
- b) The employer may consent to or refuse the request after consultation with the employee, but shall not unreasonably withhold agreement to such a request. Such contract would generally be on the basis of the same number of hours as previously worked, subject to the following:

- c) The hours worked in the following circumstances will not be incorporated in a consent and conversion:
  - (i) where 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/or
  - (ii) where the increase in hours is due to a temporary increase in hours, for example, due to the specific needs of a resident or client.
- d) In addition to the circumstances outlined above in this clause, Home Care employees' consent and conversion may be affected by:
  - (i) continuity of funding;
  - (ii) client numbers; and
  - (iii) client preferences for services including their ability to choose particular care workers.
- e) The employer will not unreasonably refuse to consent to and convert the hours of a Home Care employee based on the circumstances in 12.4 unless there is an imminent change to any of those circumstances.
- f) The guaranteed minimum number of hours resulting from a casual conversion should reflect roster cycles and shift configurations utilised in the workplace.
- g) Casual conversion will not apply where a casual has covered absences of permanent employees that are expected to return to work.

#### 12.5 Recognition of Service and Experience

- a) From the time of commencement of employment an employee has three months in which to provide documentary evidence to the employer detailing any other relevant service or experience not disclosed at the time of commencement. This evidence, in the absence of other documentary evidence, may take the form of a statutory declaration.
- b) Until such time as the employee furnishes any such documentation contemplated in sub-clause the employer shall pay the employee at the level for which proof has been provided.
- c) If within three months of commencing employment an employee does provide documentary evidence of other previous relevant service or experience not disclosed at the time of commencement, the employer shall pay the employee at the appropriate rate as and from the date of commencement that would have been paid from that date had the additional evidence been provided at that time.
- d) If an employee provides documentary evidence of other previous relevant service or experience not disclosed at the time of commencement after the said three month period, the employee shall be paid a rate appropriate for the previous relevant service or experience then proved, but only from the date of providing that evidence to the employer.

- e) An employee who is working in the same classification for more than one organisation shall notify the employer within one month of the end of each quarter of their hours worked with those other employers in the last quarter.
- f) An employee who is entitled to progress to the next year of service or experience (by reason of hours worked with other employers) as and from a particular date must provide proof of that entitlement within three months of that entitlement arising. If that proof is so provided, the employee shall be paid at the higher rate as and from the date they were entitled to progress to the next year of service or experience. If the proof is provided outside that three-month period, the employee shall be paid at the higher rate only from the date that proof is provided.
- g) A registered nurse or enrolled nurse who has trained outside New South Wales shall be paid as a registered nurse or enrolled nurse as from the date she or he notifies the employer in writing that she or he is eligible for registration or enrolment as a registered nurse or enrolled nurse; provided that she or he makes application for registration within seven days after being so notified that she or he is eligible for registration.
- h) For the purpose of yearly progression based on service and experience an employee must complete 1786 hours of work less any Annual Leave taken during the year.

## **13. Pay and Payment**

### **13.1 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 the Table's in Schedule B to this Agreement.
- b) Full-Time Employees have the benefit of all of the other entitlements set out in this Agreement.
- c) Part-Time Employees have the benefit of all of the other entitlements set out in this Agreement on a pro rata basis in the same proportion as their ordinary hours of work bear to full-time hours

### **13.2 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 B of this Agreement. In addition, a casual loading of 25% will be paid.
- b) Where it is expressly stated in this Agreement that weekend payments are to be made to casual employees, such payments shall be in addition to the casual loading referred to in this sub-clause.
- c) For public holiday work, casual employees are entitled to the penalty rates prescribed in Clause 19 -Public Holidays. Such payments are taken to be inclusive of and not in addition to the casual loading referred to in sub-clause 13.2(a).

- d) A casual employee will be paid shift allowances calculated on the base pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.
- e) A casual employee is entitled to overtime in accordance with Clause 17 - Overtime and taken to be in addition to the casual loading referred to in sub-clause 13.2(a).
- f) Weekend and overtime payments are calculated on the casual employee's ordinary pay (base rate plus the casual loading), which is then multiplied by the weekend or overtime penalty.
- g) Casual employees have the benefit of all of the other entitlements set out in this Agreement, which are applicable to casual employees, on a pro rata basis in the same proportion as their ordinary hours of work bear to full-time hours.
- h) A casual employee's entitlement to long service leave is governed by the provisions of the *Long Service Leave Act 1955 (NSW)*.
- i) Clauses that do not apply to casual employees include: Clause 15 - Rosters; Clause 21 - Annual Leave; Clause 26 - Repatriation Leave and Clause 33-redundancy.

### **13.3 Payment of Wages**

- a) Wages shall be paid fortnightly.
- 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 services of an employee are terminated with due notice, all moneys owing shall be paid upon cessation of employment, but in the case of termination without due notice, within three working days.
- d) 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 sub-clause authorises the use of deductions from wages for the purpose of such recovery. All such deduction from wages must be authorised in writing by the employee.



#### **13.4 Particulars of Wages**

- a) 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. The pay slip will include;
  - (i) the period to which the pay slip relates and the payment date
  - (ii) any amount paid to the employee that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement; and
- b) If an amount is deducted from the gross amount of the payment, the pay slip must also include the name, or the name and number, of the fund or account into which the deduction was paid.
- c) If the employee is paid at an hourly rate of pay, the pay slip must also include the hourly rate, number of hours and payment made for each rate
- d) If the employer is required to make superannuation contributions for the benefit of the employee, the pay slip must also include the fund name and the amount of each contribution that the employer made during the period to which the pay slip relates, and the name, or the name and number, of any fund to which the contribution was made.

#### **14. Hours**

##### **14.1 Reasonable Additional Hours**

- a) All hours worked over an average of 38 ordinary hours per week, will be deemed to be additional hours. All hours worked by part-time employees beyond their guaranteed minimum number of hours will be treated as additional hours for the purpose of this subclause. From time to time, employees may be required to work a reasonable amount of additional hours. All additional hours worked will be paid in accordance with this Agreement.
- b) An employee may not be required to work additional hours in circumstances where the working of additional hours would result in the employee working hours which are unreasonable having regards to (refer to section 62 of the Act):
  - (i) any risk to employee health and safety from working the additional hours;
  - (ii) the employee's personal circumstances including family responsibilities;
  - (iii) the needs of the workplace or enterprise in which the employee is employed;
  - (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;

- (v) any notice given by the employer of any request or requirement to work the additional hours;
- (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
- (vii) the usual patterns of work in the industry, or the part of an industry, in which the employee works;
- (viii) the nature of the employee's role, and the employee's level of responsibility;
- (ix) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;
- (x) any other relevant matter.

#### 14.2 Arrangement of Hours

- a) The ordinary hours of work, exclusive of meal times, shall not exceed an average of 38 hours per week.
- b) The hours of work prescribed in sub-clause (a) may be arranged as follows:
  - (i) 152 hours in a 28 calendar-day cycle to be arranged so that each employee shall not work their ordinary hours on more than 19 days in the 28 calendar-day cycle; or
  - (ii) 190 hours per 35 calendar days to be arranged so that each employee shall not work their ordinary hours on more than 19 days in the 35 calendar-day cycle; or
  - (iii) 76 hours per fortnight to be arranged so that each employee shall not work their ordinary hours on more than ten days in the fortnight; or
  - (iv) as otherwise agreed in writing between the employer and the employee.
- c) Each employee shall be entitled to not less than two full days in each week or four full days in each fortnight or 8 full days in each 28 day cycle as rostered days off, and every effort will be made for such rostered days off to be consecutive, unless otherwise agreed. For the purposes of this sub-clause, duty includes time an employee is on call.
- d) Each shift shall consist of no more than 10 hours of work at ordinary time (not including unpaid breaks) provided that an employee shall not work more than seven consecutive shifts unless the employee so requests and the employer agrees.
- e) Except for meal breaks and the periods not worked in broken shifts, all time from the commencement to the cessation of duty each shift shall count as working time.

- f) A Director of Nursing shall be free from duty for not less than nine days in each 28 consecutive days and such days free from duty may be taken in one or more periods.
  - (i) If any of the days mentioned in the immediately preceding paragraph cannot be taken by reason of emergency, such day or days shall be given and taken within 28 days of becoming due.
  - (ii) A Director of Nursing shall, where practicable, inform the employer by giving not less than seven days' notice of the days he or she proposes to be free from duty; provided that such days shall be subject to the approval of the employer, and such approval shall not be unreasonably withheld.
- g) The employer will ensure there is provision for handover between Registered Nurses at the commencement of each shift to inform of any changes to a residents' health status.

#### 14.3 Minimum Starts

- a) Full-time employees shall receive a minimum payment of four hours for each start in respect of ordinary hours of work.
- b) Part-time and casual employees shall receive a minimum payment of four hours for each start.
- c) Part-time home care employees and casual home care employees shall receive a minimum payment of 2 hours for each engagement.

#### 14.4 Allocated Days Off (**ADO**)

- a) A full-time employee whose ordinary hours of work are arranged in accordance with sub-clause 14.2(b)(i) and (ii) shall be entitled to an ADO in each cycle of 28 days or 35 days as the case may be. The ordinary hours of work on each of those days shall be arranged to include a proportion of one hour on the basis of 0.4 of one hour for each 8-hour shift worked and 0.5 of one hour for each 10-hour shift worked which shall accumulate towards the employee's allocated day off duty on pay.
- b) A full-time employee's ADO shall be determined by mutual agreement between the employee and the employer having regard to the needs of the place of employment or sections thereof. Such ADO shall, where practicable, be consecutive with the rostered days off. Provided that ADO's shall not be rostered on public holidays.
- c) Where the employer and the employee agree, up to five (5) ADO's may be accumulated and taken in conjunction with the employee's annual leave or at another agreed time.
- d) No time towards an ADO shall accumulate during periods of workers' compensation, unpaid parental leave, long service leave, any period of unpaid leave or annual leave.
- e) Credit towards an ADO shall continue to accumulate whilst an employee is on paid personal/ carer's leave. Where an allocated day off duty falls

during a period of personal/ carer's leave, the employee's available sick leave shall not be debited for that day.

- f) Employees entitled to ADO's shall continue to accrue credits towards them in respect of each day those employees are absent on leave in accordance with clause 19 - Public Holidays.
- g) An employee will be paid for any accumulated ADOs, at ordinary pay, on the termination of their employment for any reason.

#### 14.5 Broken Shifts

- a) An employee who is not a nurse (i.e. AIN, EN or RN) may agree to work broken shifts at any time for any duration.
- b) A casual or part-time (excludes full-time employees) employee may be required to work broken shifts only in the following circumstances:
  - (i) in home care; or
  - (ii) in an emergency – including an employee absence; or
  - (iii) up to and including a 4-week continuous period for circumstances other than those covered by subclauses 14.5(b)(i) and (ii).
- c) Where an employee has served a period of broken shifts in accordance with subclause (iii) the employee shall not be required to serve a further period on broken shifts until he or she has been off broken shifts for a period equivalent to the previous period on broken shifts.
- d) A 'broken shift' for the purposes of this sub-clause means a single shift worked by an employee that includes one or more breaks other than a meal break.
- e) Where the time between the commencement and termination of the broken shift exceeds 12 hours, all work performed beyond that 12 hours will be paid at double ordinary time.
- f) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.
- g) Where a broken shift is worked, an employee shall receive an allowance equivalent to half an hour of their ordinary pay per shift.
- h) Payment for a broken shift shall be at ordinary pay with penalty rates and shift allowances in accordance with Clause 18 - Shift and Weekend Work.

### 15. Rosters

- 15.1 The employer shall display on a roster, in a place conveniently accessible to employees the ordinary hours of work for each employee; and ADO's where applicable.
  - a) The roster shall be displayed two weeks prior to the commencing date of the first working period in any roster subject to sub-clause (b).

- b) It shall not make it obligatory for the employer to display any roster of ordinary hours of work of members of casual and/or relieving staff.
- c) Seven (7) days' notice of a change of roster will be given by the employer to an employee.
- d) 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 in an emergency or pursuant to clauses 28- Ceremonial Leave, 22- Personal/carers and Compassionate Leave, and/or 29- Family and Domestic Violence Leave. Where such alteration involves an employee working on a day which would have been his or her rostered day off, the employee will be entitled to a day off in lieu which will be as mutually arranged.
- e) A roster may also be altered where the employer and employee(s) affected agree (i.e. a part time employee who picks up additional hours, but still receives 4 rostered days off in the fortnight.) or, for home care employees in accordance with clause 15.2 Client Cancellation.

## 15.2 Client Cancellation

- a) Where a home care client cancels or changes the scheduled service, a full-time or part-time home care employee may be directed to perform other work at the same time without loss of pay.
- b) Where the employer cannot provide other work at that time they may direct the employee to work make-up time within the following 3 months.
- c) The employer may not direct the employee to work make-up time if they had not been notified of the cancellation before the employee arrived to perform that work.
- d) The employer may only withhold payment for the cancelled period if:
  - (i) They provide the employee with notice of this change by 5.00 pm the day before, and
  - (ii) the employee informs them in writing at the time of the notice that they will not work make-up time within the following 3-month period.
- e) Make-up time may include work with other clients or in other areas of the employer's business.
- f) The employer may only direct an employee to work make-up time at a time and place that is reasonable.
- g) An employee must not unreasonably refuse to work make-up time.

## 16. Breaks

### 16.1 Tea and meal breaks:

- a) Two separate ten-minute tea breaks (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 7.6 hours or

more; where less than 7.6 ordinary hours are worked employees shall be allowed one 10 minute tea break in each four-hour period.

- b) Subject to agreement between the employer and the employee, the two ten-minute tea breaks may alternatively be taken as one 20-minute tea break, or by one ten minute tea break with the employee allowed to proceed off duty ten minutes before the completion of the normal shift finishing time. Amendments will only be granted by the Nurse in Charge when operationally feasible. Such tea break(s) shall count as working time.
- c) An employee who works more than 5 hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 mins. Such meal break will be taken between the fourth and sixth hour after beginning work, where reasonably practicable.
- d) Where an 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 employee requests in writing, in accordance with the provisions of Clause 8 – Agreement Flexibility and the employer agrees, an employee may work up to six hours without a meal break.
- f) Additionally, an employee may request to combine their tea breaks and meal breaks into one longer break. This is subject to approval by the Nurse in Charge for that shift and as above will only be granted when operationally feasible.
- g) Notwithstanding the provisions of sub-clause 16.2, an employee required to work in excess of 10 hours, including overtime in a shift shall be entitled to a 60-minute meal break. Such time shall be taken as either two thirty-minute meal breaks or one 60-minute meal break, subject to agreement between the employer and employee.
- h) Where a home care employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program, they will be paid for the duration of the meal period at ordinary pay, and the meal break allowance does not apply.

16.2 Rest breaks between shifts including after overtime:

- a) An employee must receive a rest break of not less than 10 hours between the termination of one shift or period of duty and the commencement of another. By mutual agreement, the 10 hour rest break may be reduced to 8 hours. If on the instruction of the employer, an employee resumes or continues to work without having had ten consecutive hours off duty, or eight hours as agreed, they will be paid at the rate of double time until released from duty for such period.

- b) A 10 hour rest period will apply to employees other than casuals after overtime is worked.

## 17. Overtime

- 17.1 Overtime is paid in the following circumstances:
  - a) Where a full time employee works in excess of their ordinary hours on any day or shift;
  - b) Where a part time employee:
    - (i) works in excess of their rostered shift; and/or
    - (ii) works in excess of 76 hours per fortnight, where employed by the fortnight; and/or
    - (iii) works in excess of 152 hours per four weekly period, where employed on a four weekly basis; and/or
    - (iv) works on a rostered day off.
  - c) Where a casual employee:
    - (i) works in excess of 10 hours per shift; and/or
    - (ii) works in excess of 76 hours per fortnight.
  - d) Where an employee is deprived of part or all of their break between shifts as required by clause 16.2 and 17.3.
- 17.2 Overtime shall be paid at the base rate of pay in accordance with the following:
  - a) Monday to Friday - Overtime shall be paid time and one half up to two (2) hours each day and thereafter double time
  - b) Saturday – Overtime shall be paid at double time for employees classified as home care employees, all other employees covered by this agreement shall be paid time and one half up to two (2) hours each day and thereafter double time
  - c) Sunday- Overtime shall be paid at double time;
  - d) 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 18-Shift and Weekend Work.
  - f) Overtime penalties do not apply to Directors of Nursing; Deputy Directors of Nursing; and Assistant Directors of Nursing.
- 17.3 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.

17.4 Employees who are recalled to work overtime after leaving the employer's place of work shall be paid a minimum of four hours at the applicable overtime rate for each time so recalled. Provided that, except in unforeseen circumstances, an employee shall not be required to work the full four hours if the tasks they were recalled to perform are completed within a shorter period.

- a) An employee recalled to work overtime shall be reimbursed reasonable travel expenses and/or travel time (if applicable) incurred in respect of the recall to work.
- b) Provided that where an employee elects to use his or her own vehicle the employee shall be paid the per kilometre allowance set as set out in Item 2, Schedule C or as per the annual Australian Tax Office rate (if greater than Item 2, Schedule C).

17.5 An employee (whether they are required to be on call or not) who is required to perform work by the employer via telephone or other electronic communication away from the workplace will be paid at the appropriate overtime rate for a minimum of one hour's work. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment. Time worked beyond one hour will be rounded to the nearest 15 minutes. 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.

17.6 In lieu of receiving payment for overtime in accordance with this clause, employees may be compensated by way of time off in lieu of overtime on the following basis:

- a) Time off in lieu of overtime is taken on the basis of the equivalent overtime payment, that is for example if the overtime payment is time and one half the employee will receive time and one half for time in lieu, however, any applicable shift and weekend penalties shall still be paid as if the time was



worked when taking such time in lieu. It must be taken within four months of it being accrued at a mutually agreed time.

- b) Where it is not possible for an employee to take the time off in lieu of overtime within the six month period, it is to be paid out at the appropriate overtime rate based on the rates of pay applying at the time payment is made.
- c) Employees cannot be compelled to take time off in lieu of overtime and an employer cannot be compelled to agree to provide the employee with time off in lieu of overtime.
- d) The employer must maintain records of all time in lieu of overtime owing and taken by employees.
- e) Where no election is made the employee shall be paid overtime rates in accordance with this Agreement.
- f) If, on the termination of the employee's employment, time off in lieu for overtime worked by the employee has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

## **18. Shift and Weekend Work**

- 18.1 Employees other than Home Care Employees shall be paid shift and weekend penalties as per Schedule B.
- 18.2 Home Care Employees shall be paid the following penalties, calculated on their ordinary pay, for shifts rostered in accordance with the following.
  - a) 12.5% for afternoon shift which finishes after 8.00 pm and at or before 12 midnight Monday to Friday.
  - b) 15% for night shift which finishes after 12 midnight or commences before 6.00 am Monday to Friday.
  - c) 150% for public holiday, any time worked between midnight on the night prior to the public holiday and midnight of the public holiday.

## **19. Public Holidays**

- 19.1 Public holidays are provided for in the NES. This clause contains additional provisions.
- 19.2 The employer may request an employee to work on a particular public holiday. An employee who, without the consent of the employer or without reasonable cause, such as personal/carer's leave, is absent from work on a public holiday after agreeing to work on a public holiday, is not entitled to any payment for such public holiday.
- 19.3 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. This Agreement expressly contemplates that the employer will require work on public holidays, or particular public holidays, and the parties acknowledge that the nature of the work performed by the employee, the type of employment (for example, whether full-time, part-time, casual or shift work) and the nature of the employer's workplace or enterprise (including its operational requirements) will require work on public holidays, or particular public holidays.

19.4 Public holidays shall be allowed to employees without loss of ordinary pay.

19.5 For the purposes of this agreement, the following shall be deemed to be public holidays:

- a) New Year's Day; Australia Day; Good Friday; Easter Saturday; Easter Monday; Anzac Day; Queen's Birthday; Labour Day; Christmas Day; Boxing Day;
- b) Easter Sunday (as declared or prescribed by or under a law of NSW);
- c) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday; and
- d) any other day, or part –day, declared or prescribed by or under a law of a State or Territory to be observed within a region of that State or Territory as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.
- e) If, under (or in accordance with a procedure under) a law of a State or Territory, a day or part-day is substituted for a day or part-day that would otherwise be a public holiday because of subclause 19.5(a), then the substituted day or part-day is the public holiday.

19.6 Additional Public Holiday

- a) Where, in accordance with clause 19.5(d), less than a full day is proclaimed and observed as a public holiday, within the calendar year and within the area in which the facility is situated, a full day will be observed as a public holiday between Christmas and New Year, within the days Monday to Friday inclusive and not coinciding with a date that is already a gazetted public holiday for that calendar year.
- b) The employer and employees may agree to substitute another day for a public holiday observed at 19.5(a).

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

- a) Full-time Employees: Time and one half for all ordinary time worked in addition to the weekly rate. Alternatively, if the employee elects, half-time extra for all time worked in addition to the weekly rate and have 1 ordinary

working day added to be taken in conjunction with the period of annual leave.

- b) Part-time Employees: Double and a half for all time worked on the public holiday, although where the time worked by agreement is less than the rostered shift, the balance of the rostered shift will be paid at ordinary pay. Alternatively, if the employee elects, half-time extra for all time worked in addition to the weekly rate and have the equivalent number of hours worked added to be taken in conjunction with the period of annual leave.
  - c) Casual Employees: Double time and one-half the base rate of pay for casuals for all time worked. Such payment shall be taken to be inclusive of and not in addition to the casual loading referred to in sub-clause 12.2.
- 19.8 The election referred to in subclause 19.6 is to be made in writing by the employee at the commencement of each year of employment and may only be changed within that period with the agreement of the employer.
- 19.9 An employee who is normally rostered on a public holiday, but is not required to work will be paid at the ordinary rate of pay for the hours they would have been rostered to work on the public holiday.
- 19.10 An employee who, without the consent of the employer or without reasonable cause, such as personal/carer's leave, is absent from the last rostered shift before or the first rostered shift after a public holiday is not entitled to any public holiday penalty rates for work performed on such public holiday.

## **20. Allowances and Higher Duties**

### **20.1 In Charge Allowance**

- a) A registered nurse who is designated to be in charge during the day, evening or night of a residential aged care facility shall be paid in addition to his or her appropriate salary, whilst so in charge, the per shift allowance set out in of Schedule C to this Agreement.
- b) A registered nurse who is designated to be in charge of a shift in a section of a residential aged care facility shall be paid in addition to his or her appropriate salary, the per shift allowance set out in Item 1 of Schedule C to this Agreement.
- c) This sub-clause shall not apply to registered nurses holding classified positions of a higher grade than a registered nurse.

### **20.2 Vehicle/Travelling Allowance**

- a) An employee, other than a Home Care Employee, sent for duty to a place other than his or her regular place of duty shall be paid for all excess travelling time at the appropriate rate of pay and reimbursed excess travelling expenses.
- b) Where an employee is called upon and agrees to use his or her private vehicle for official business, the employee shall be paid the per kilometre allowance set out in Item 2 of Schedule C to this Agreement excluding

travel to and from the employee's home to the first place of work and return to home at the end of his or her duties. This allowance will be revised each year in line with movements to the vehicle allowance in clause 16.5(a) of the *Nurses Award 2010* and the Australian Tax Office annual rate (if greater than the Nurses Award).

- c) Where an employee is required to use public transport for travel on official business such employee is to be reimbursed actual expenses incurred for such travel, excluding travel from the employee's home to the first place of work and return to home at the cessation of his or her duties.
- d) No payment shall be made under sub-clauses 20.2(b) and (c) unless the employer is satisfied that the employee has incurred expenditure for such travel.

### 20.3 Uniforms Allowance

- a) Subject to sub-clause 20.3(c) sufficient suitable and serviceable uniforms or overalls shall be supplied free of cost, to each employee required to wear them. An employee to whom a new uniform or part of a uniform has been supplied by the organisation, who fails to return the corresponding article last supplied, shall not be entitled to have such article replaced without payment for it at a reasonable price, in the absence of a satisfactory reason for the loss of such article or failure to produce such uniform or part thereof.
- 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 Item 3 of Schedule C to this Agreement.
- d) In lieu of supplying special-type shoes where required to an employee, the employer shall pay the employee the weekly allowance set out in Item 4 of Schedule C to this Agreement.
- e) In lieu of paying a socks/stocking allowance the uniform allowance has been amended to include and replace this allowance.
- f) If, in any facility, the uniforms of an employee are not laundered at the expense of the facility, the sum per week set out in Item 5 of Schedule C to this Agreement shall be paid to the said employee.
- g) An employee who works less than thirty-eight hours per week shall be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to thirty-eight ordinary hours.
- h) Each employee whose duties require them to work out of doors shall be supplied with overboots. Sufficient raincoats shall also be made available for use by these employees.

- i) Each employee whose duties require them to work in a hazardous situation with or near machinery shall be supplied with appropriate protective clothing and equipment.
- j) Laundry allowance shall not be paid to any employee on absences exceeding one week.
- k) All other allowances in this clause will not be paid to employees during absences on:
- l) Workers Compensation; Long Service Leave and periods of leave without pay; and
- m) Personal/Carer's leave beyond 3 weeks.
- n) For employees engaged in home care services the following shall apply:
  - (i) Where the client supplies equipment, materials and tools, the employer shall ensure that they are of reasonable quality and comply with safety standards;
  - (ii) Where an employee is required to work outdoors the employer shall provide a suitable broad-brimmed hat.

#### 20.4 Oncall allowance

- a) An employee who is required to be on call and/or who is required to perform work via electronic communication away from the workplace, that is, the employee agrees to make themselves ready and available to return to work at short notice whilst off duty, shall be paid the allowance, for each period of 24 hours or part thereof, set out in Table 2 - Allowances to this Agreement.
- b) An employee who is directed to remain on call during a meal break shall be paid the meal break allowance set out in Table 2 - Allowances to this Agreement, provided that no allowance shall be paid if, during a period of 24 hours, including such period of on call, the employee is entitled to receive the allowance prescribed in sub-clause 20.4(a).
- c) Where an employee on call in accordance with sub-clause 20.4(a), leaves the residential aged care facility and is recalled to duty, she or he shall be reimbursed all reasonable fares and expenses actually incurred. Where in these circumstances the employee elects to use his or her own vehicle the employee shall be paid the per kilometre allowance set out in Table 2 - Allowances to this Agreement.
- d) This subclause shall not apply to a Director of Nursing, Deputy Director of Nursing or an Assistant Director of Nursing.

#### 20.5 Medication Allowance- AINs

An Assistant in Nursing who is qualified to and is requested by management to administer medication will be paid by the employer the weekly allowance set out in Table 2 - Allowances to this Agreement.

#### 20.6 Continuing Education Allowance

- a) A registered nurse or enrolled nurse who holds a continuing education qualification in a clinical field, in addition to the qualification leading to registration or enrolment, shall be paid an allowance subject to the conditions set out in this clause.
- b) The qualification must be accepted by the employer to be directly relevant to the competency and skills used by the employee in the duties of the position.
- c) The allowance is not payable to Deputy Directors of Nursing or Directors of Nursing unless it can be demonstrated to the satisfaction of the employer that more than fifty per cent of the employee's time is spent doing clinical work.
- d) The allowance is not payable to Clinical Nurse Specialists, Clinical Nurse Consultants or Clinical Nurse Educators.
- e) A registered nurse or enrolled nurse holding more than one relevant qualification is only entitled to the payment of one allowance, being the allowance of the highest monetary value.
- f) The employee claiming entitlement to a continuing education allowance must provide evidence to the employer that they hold that qualification.
- g) A registered nurse 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 registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Table 2 - Allowances to this Agreement.
- h) A registered nurse 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 registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Table 2 - Allowances to this Agreement.
- i) A registered nurse 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 registered nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Table 2 - Allowances to this Agreement.
- j) An enrolled nurse 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 enrolled nurse in carrying out the duties of the position shall be paid the weekly allowance set out in Table 2 - Allowances to this Agreement.
- k) The allowances set out in sub-clauses 20.6 (g), (h), (i) and (j) are not included in the employee's ordinary pay and will not constitute part of the all-purpose rate.

- l) A registered nurse or enrolled nurse who is employed on a part-time or casual basis shall be paid these allowances on a pro rata basis.
- m) The rates for these allowances shall be adjusted in accordance with increases in other wage-related allowances contained in this Agreement.

#### 20.7 Higher Duties

- a) Subject to sub-clauses (b), (c) and (d) of this clause, 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 sub clause (a) of this clause shall not apply where the employee of the higher classification is off duty pursuant to sub-clause 14.2(f) - Arrangement of Hours, except insofar as a Director of Nursing accumulates days off for a continuous period of one week or more; nor when an employee in a higher grade is absent from duty by reason of his/her additional day off duty as a consequence of working a 38 hour week.
- c) Further, the provisions of sub-clause (a) of this clause shall not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than pursuant to sub-clause 14.2(f) -Arrangement of Hours.
- d) Subject to sub-clauses (b) and (c) above, the provisions of sub-clause shall not apply where a day worker is being relieved and is absent from duty for a period of three consecutive working days or less which have been rostered in advance.

#### 20.8 Meal Allowance

- a) An employee who is required to work overtime for more than one hours and such overtime goes beyond 7:00a.m, 1:00 p.m., and 6:00 p.m. shall, at the option of the employer, be supplied with a meal or shall be paid, as the case may be:
  - (i) the amount for breakfast set out in Item 9(a) of Schedule C to this Agreement;
  - (ii) the amount for lunch set out in Item 9(b) of Schedule C to this Agreement
  - (iii) the amount for the evening meal set out in Item 9(c) of Schedule C to this Agreement.
- b) An employee who is directed to remain on call during a meal break shall be paid the meal break allowance set out in Table 2 - Allowances to this Agreement.

### Part C – Leave

## 21. Annual Leave

- a) Employees are entitled to annual leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 6 of the Act).
- b) Casual employees have no entitlement to annual leave.

### 21.1 Accrual of Annual Leave

- a) All employees, other than shift workers, are entitled to 5 weeks paid annual leave for each year of service with the employer
- b) Shift workers are entitled to one additional week of Annual Leave.
- c) For the purpose of the additional week's annual leave provided by the NES, a shiftworker is defined as an employee who:
  - (i) is regularly rostered to work their ordinary hours outside Monday to Friday, 6am to 6pm; and/or
  - (ii) works for more than 4 ordinary hours on 10 or more weekends.
- d) To avoid any doubt, this means that an employee who is not a shiftworker for the purposes of clause 21.3(b) above is entitled to five weeks of paid annual leave for each year of service with their employer, and an employee who is a shiftworker for the purposes of clause 21.3(b) above is entitled to six weeks of paid annual leave for each year of service with their employer.
- e) 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.

### 21.2 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 21.7.

### 21.3 Taking of Annual Leave



- a) An employee is entitled to take an amount of annual leave during a particular period if:
  - (i) at least that amount of annual leave is credited to the employee; and
  - (ii) the employer has authorised the employee to take the annual leave during that period.
- b) In the taking of leave, the employee shall make written application to the employer, giving timely notice of the desired period of such leave.
- 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;
  - (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 2 weeks.
- e) Should an employee require an amendment to annual leave already taken due to illness while on leave they will have 14 days from the date they return to work to provide a medical certificate and request this change as per the payroll process.
- f) Should an employee require an amendment to annual leave already taken for compassionate and/or carer's leave they will have 14 days from the return to work date to requests this change as per the payroll process.

#### 21.4 Cashing out of Annual Leave

Annual leave credited to an employee may be cashed out by agreement, subject to the following conditions:

- a) paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
- b) 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 up to a maximum of the equivalent of 2 weeks' pay per calendar year; and
- c) 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.

#### 21.5 Annual Leave Loading

- a) In addition to their Annual Leave payment, an employee 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.
- b) The Annual Leave loadings in clause 21.5(a) are not payable for days which have been added to be taken in conjunction with annual leave in accordance with the election provisions of clause 19 - Public Holidays or for purchased additional leave in accordance with clause 21.8.
- c) Shift allowances and weekend penalties are not payable for public holidays which occur during a period of annual leave.

#### 21.6 Annual Leave and Service

A period of annual leave does not break an employee's continuity of service and annual leave counts as service for all purposes.

#### 21.7 Payment of Annual Leave on Termination

If, when the employment of an employee ends, the employee has a period of untaken paid annual leave, the employer must pay the employee the amount that would have been payable to the employee had the employee taken that period of leave.

#### 21.8 Purchased Additional Leave (PAL)

- a) The employer may offer permanent employees the opportunity to "purchase" an additional one week of leave each year in exchange for a proportional reduction in their salary over 12 months and within each financial year and is treated as leave without pay.
- b) An employee wishing to purchase additional leave must enter into a written agreement with the employer which shall include:
  - (i) an election at the beginning of each financial year (i.e. at 1 July each year).;
  - (ii) agreement that the employee's salary will be reduced by 1.92% for the period of the agreement; and
  - (iii) authority for the employer to withhold an amount of money, from any monies owing to the employer for PAL taken but not accrued by the final pay within the financial year or at termination.
- c) Annual leave entitlements shall be exhausted before the employee's PAL can be accessed.
- d) All PAL must be used within each financial year (i.e. by 30 June each year). If any PAL is not used by the final pay within the financial year, or the employee wishes to cease the arrangement, the foregone salary (if any) will be re-credited and paid to the employee.
- e) Superannuation entitlements will be calculated on the pre-reduction salary and leave loading shall not apply to PAL.

## **22. Personal/Carer's and Compassionate Leave**

Employees are entitled to personal/carer's leave and compassionate leave in accordance with the provisions of the NES.

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

### **22.1 Entitlement to paid Personal/Carer's Leave**

- a) For each year of service with his or her employer, an employee is entitled to up 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.

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

An employee may take paid personal/carer's leave:

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

### **22.3 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.

### **22.4 Personal/Carer's 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.

### **22.5 Cashing out of Paid Personal/Carer's Leave**

An employee is entitled to cash out an amount of paid personal/carer's leave credited to the employee provided:

- a) the employer authorises the employee to forgo the amount of paid personal/carer's leave. The employer has complete discretion.
- b) paid personal/carer's leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid personal/carer's leave being less than 15 days; and

- c) each cashing out of a particular amount of paid personal/carer's leave must be by a separate agreement in writing between the employer and the employee; and
- d) 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.

#### 22.6 Unpaid Carer's Leave

- a) An 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.

#### 22.7 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.

#### 22.8 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

#### 22.9 Notice and Evidence Requirements

- a) To be entitled to leave under clause 22.2 and 22.7 an employee must give the employer notice of the period, or expected period of the leave:
  - (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;
- b) An 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 may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the personal leave has started) either:
  - (i) a medical certificate from a medical 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) 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 may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started) either:
  - (i) a medical certificate from a medical practitioner stating that in their opinion the member 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 the member because the member requires or required care or support during the period because of personal illness, or injury, of the member or an unexpected emergency affecting the member.
- e) To be entitled to compassionate leave during the period, the employee may be required to give the employer as soon as reasonably practicable (which may be at a time before or after the compassionate leave has started):
  - (i) a medical certificate from a medical 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 the death of the member.

## 22.10 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.

## **23. 23. Community Service Leave**

23.1 Employees are entitled to community service Leave in accordance with the provisions of the NES.

23.2 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 (VEMA); or
  - (iii) an activity prescribed in Regulations.

23.3 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 re 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) Where the duration of jury service re a particular jury service summons exceeds 10 days, the employer agrees to assist the employee as far as is reasonably practical to maintain their regular income. The assistance may include: flexibility of rosters; access to Annual Leave and/or Long Service Leave.
- d) 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.
- e) No payment is required where evidence is required by the employer and not provided by the employee.

#### 23.4 VEMA

- a) An employee engages in a VEMA if:
  - (i) the employee engages in an activity that involves dealing with an emergency or natural disaster; and the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
  - (ii) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
- b) either:
  - (i) the employee was requested by or on behalf of the body to engage in the activity; or no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.

## 24. Parental Leave

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

#### 24.1 Paid parental leave

- a) Full-time and part-time employees may claim paid parental leave at ordinary pay, from the date the parental leave commences in the following circumstances:
  - (i) first claim: where eligible for unpaid parental leave; and
  - (ii) second and subsequent claims: where an employee having returned to work from a period of parental leave has completed 3 months of continuous service prior to each claim.
- b) For the purposes of the calculation of "ordinary pay" for paid parental leave purposes, an employee will be paid the higher of:
  - (i) The average of the ordinary hours actually worked by the employee in the 12 month period ending at the commencement of parental leave; or
  - (ii) The ordinary hours worked by the employee at the time of the commencement of parental leave.
- c) Paid parental leave includes:
  - (i) 8 weeks paid maternity leave for the birth mother;

- (ii) 8 weeks paid adoption leave for the initial primary carer of the adopted child, (evidenced as way of statutory declaration); and
- (iii) 2 weeks paid partner leave.
- (iv) Paid partner leave will be payable to:
  - (v) the father; or
  - (vi) partner of the birth mother; or
  - (vii) partner of the initial primary carer of an adopted child.
- d) Partner includes same-sex and de facto partner but does not include former de facto partners.
- e) Any period of "paid no safe job leave" taken by an employee pursuant to the "Transfer to a Safe Job" provisions of the Act shall be deducted from the employee's entitlement to paid maternity leave.

## **25. Long Service Leave**

25.1 For long service leave the following provisions shall apply:

- a) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after fifteen years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one half months' long service leave on full pay. Such leave shall be taken at a time to be mutually arranged between the employer and the employee.
- b) Where the service of an employee with at least five years' service is terminated, the employee shall be entitled for five years' service to one month's long service leave on full pay and for service after 5 years to a proportionate amount of such leave on full pay calculated on the basis of 2 months' long service leave for 10 years' service and thereafter calculated according to subclause 25.1(a).
- c) An employee with an entitlement to long service leave, may elect to access their entitlement:
  - (i) on full pay, or
  - (ii) on half pay, or
  - (iii) on double pay.
- d) When an employee elects to access their long service leave entitlement the following amounts of long service leave are to be deducted from the employee's long service leave entitlement:
  - (i) for each period of long service leave taken on full pay – the number of days so taken;



- (ii) for each period of long service leave taken on half pay – half the number of days so taken; and
- (iii) for each period of long service leave taken on double pay – twice the number of days so taken.

It is emphasised that the accessing of long service leave on the basis of either (i), (ii or (iii) above is made by the employee's voluntary election.

- a) When an employee elects to access their long service leave entitlement, other leave entitlements will accrue as follows:
  - (i) for each period of long service leave taken on full pay - all other leave entitlements accrue at the employee's ordinary rate;
  - (ii) for each period of long service leave taken on double pay - all other leave entitlements accrue at the employee's ordinary rate; and
  - (iii) for each period of long service leave taken on half pay – annual leave entitlements accrue at half the employee's ordinary rate while all other leave entitlements accrue at the employee's ordinary rate.
- b) Where an employee has acquired a right to long service leave under subclause (a) of this clause, then and in every such case:
  - (i) If before such leave has been entered upon the employment of such employee has been terminated such employee shall be entitled to receive the monetary value of the leave to which such employee has been entitled computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment;
  - (ii) If such employee dies before entering upon such long service leave, or if after having entered upon the same, dies before its termination, any accrued long service leave will be paid out in accordance with subsection 4 (b) of the *Long Service Leave Act 1955* (NSW); This provision provides that, where a worker dies and any long service leave:
    - to which the worker was entitled has not been taken; or
    - accrued upon termination of the services of the worker by reason of the worker's death and has not been taken; the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the worker in respect of long service leave less any amount already paid to the worker in respect of that leave.
- c) For the purpose of this clause:
  - (i) Continuous service with the employer prior to the coming into force of this Agreement shall be taken into account;
  - (ii) One month equals four and one-third weeks; and

(iii) Continuous service shall be deemed not to have been broken by:

- any period of absence on leave without pay not exceeding six months;
- absence of an employee from the workplace whilst a member of the Defence Forces of the Commonwealth in time of war.

- d) Where any 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.
- e) Any period(s) of part-time employment with the same employer shall count towards long service leave as provided for in this clause (i.e. Clause 25). Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to 38 hours.
- f) Where an employee has accrued a right to an allocated day off duty on pay prior to entering a period of long service leave such day shall be taken on the next working day immediately following the period of long service leave. An employee returning to duty from long service leave shall be given the next allocated day off duty in sequence irrespective of whether sufficient credits have been accumulated or not.

25.2 Where the provisions of this clause are more beneficial than the provisions of the *Long Service Leave Act 1955* (NSW) the provisions of this clause shall apply. Where this clause is silent or the provisions of the *Long Service Leave Act 1955* (NSW) are more beneficial, the provisions of the *Long Service Leave Act 1955* (NSW) shall apply.

## 26. Repatriation Leave

26.1 Employees who are ex-servicemen or ex-service women may be granted special leave in one or more periods up to a maximum of 6.5 working days in any period of twelve months without deduction from annual or sick leave credits for the following purposes in connection with an accepted war-caused disability or in connection with an application to the Repatriation Department for a disability to be so accepted:

- a) to attend a hospital or clinic or visit a medical officer in that regard;
- b) to attend a hospital, clinic or medical officer or to report for periodical examination or attention; and
- c) to attend limb factories for the supply, renewal and repair of artificial replacements and surgical appliances.

26.2 Employees are to provide the employer with documentary evidence as to the attendance prior to the payment of special leave being granted.

## **27. Leave Without Pay**

- 27.1 By agreement between the employer and a permanent employee, an employee may be granted a period of leave without pay.
- 27.2 The period of leave without pay will not break the continuity of service of the employee but will not count for the purpose of:
- a) accruing annual leave or personal/carer's leave, incremental progression, and public holidays;
  - b) accruing long service leave, except in the case of employees who have completed at least ten years' service (any period of absence without pay being excluded therefrom) in which case service shall include any period without pay not exceeding six months;
  - c) the qualifying period for paid and unpaid parental leave; and
  - d) the calculation of notice and severance pay in accordance with clause 30 - Termination of Employment and clause 33- Redundancy.

## **28. Ceremonial Leave**

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

## **29. Family and Domestic Violence Leave**

- 29.1 Domestic Violence
- a) For the purpose of this clause, family and domestic violence is defined as any violent, threatening or other behaviour by a person that coerces or controls a member of the person's family or household or causes the family or household member to be fearful. It includes current or former partners in an intimate relationship, whenever and wherever the violence occurs. It may include physical sexual, emotional, psychological or financial abuse.
  - b) Any employee who is experiencing domestic violence can raise the issue with an employee within the People and Culture Department in the knowledge that the matter will be treated empathetically and confidentially.
  - c) The employer and employees within the People and Culture Department are required to:
    - (i) Provide support and information as appropriate;
    - (ii) Discuss measures to prioritise safety in the workplace and make all reasonable efforts to provide a safe work environment for the employee;
    - (iii) Provide employees with access to EAP to provide support in relation to the issues; and

- (iv) Where practicable, work with the employee to grant reasonable leave and adjust work schedules or location if required.

## 29.2 Leave

- a) The employer will provide paid leave of three (3) days and unpaid leave of five (5) days per calendar year to employees who are experiencing family and domestic violence, and need time off work for medical and legal assistance, court appearances, counselling, relocation or to make other safety arrangements.
- b) An employee by agreement is also able to use other available leave (e.g. personal, long service leave or annual leave) if required.
- c) An employee may be required to produce evidence to support the need for leave such as a medical certificate, a document issued by the police service or a court, or a statutory declaration.
- d) The employer may agree to provide additional leave on a case by case basis, as approved by the Head of People and Culture and/or CEO.

## Part D – Other Provisions

### 30. Termination of Employment

- 30.1 Prior to reaching any decision to terminate the employment of an employee on grounds other than would justify summary dismissal, the employer will:
  - a) inform the employee that the termination of their employment is being considered;
  - b) advise the employee of the reasons for termination; and
  - c) provide the employee with an opportunity to show cause why their employment should not be terminated.
- 30.2 An employee shall be given reasonable time to respond, and shall be provided with details of any relevant material. Where a meeting is held with the employee, the employee is entitled to have a support person present.
- 30.3 Subject to subclauses 30.4 to 30.9, employment, other than the employment of a casual, will be terminated by the employer or the employee only on the provision of the applicable notice as set out in clause 30.10, or by the payment by the employer, or forfeiture by the employee (as agreed to in writing by such an employee), of wages in lieu of notice.
- 30.4 The employer may, without notice, summarily dismiss an employee at any time for serious misconduct or willful disobedience. Payment is up to the time of dismissal only.
- 30.5 Provided that employment may be terminated by part of the period of notice specified, and part payment or part forfeiture, in lieu of the period of notice specified.

- 30.6 In respect of any forfeiture by the employee of wages in lieu of notice, the employee may at any time authorise the employer to deduct from his or her wages payable up to, or on termination, relevant wages payable in lieu of notice. Should an employer not receive such an authorisation from the employee and make the applicable deduction in whole, the employer may forthwith recover from the employee such outstanding payment or sum or amount payable or owing by the employee pursuant to this clause in any court of competent jurisdiction.
- 30.7 The requirement for an employee to provide notice under this clause shall not apply in circumstances where the employee is entitled to bring the employment to an end because of the actions of the employer, for example, because of a repudiatory breach of the employment contract by the employer.
- 30.8 In respect of the requirement for an employer to provide or pay notice under this clause, nothing in this clause shall exclude the application of Subdivision C of Division 11 of Part 2-2 of the Act.
- 30.9 It is the intention of this clause that both the employer and the employee provide appropriate notice upon termination, or pay or forfeit such notice in wages. The application and interpretation of this clause shall give this intention full effect.
- 30.10 Notice of termination

<b>Period of Continuous Service</b>	<b>Minimum Period of Notice</b>
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

- a) A Director of Nursing; Deputy Director of Nursing or an Assistant Director of Nursing - four weeks' notice.
  - b) Employees (other than casuals) aged 45 years or older will be entitled to an additional one week's notice if the employee has completed at least two years' continuous service for the employer.
  - c) Casuals are to be given notice to the end of the current shift worked.
- 30.11 The employer will give the employee a statement signed by the employer stating the period of employment and when the employment was terminated if the employee requests.
- 30.12 Abandonment of Employment

Where an employee is absent from work for a continuous period of two working days without the consent of the employer, and without notification to the employer, the employer shall be entitled to inform the employee by written correspondence that unless the employee provides a satisfactory explanation for her or his absence within two days of the receipt of such a request, the employee will be considered to have abandoned employment. If the employer

terminates the employee's employment as a result, the termination shall be in accordance with this clause, including the provision of notice.

### **31. Consultation Regarding Major Workplace Change**

#### 31.1 Employer to notify

- a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any, which may be the union.
- b) Significant effects include termination of employment; major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations; and the restructuring of jobs. Provided that where this Agreement makes provision for alteration of any of these matters an alteration is deemed not to have significant effect.

#### 31.2 Employer to discuss change

- a) The employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in clause 31.1, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees and must give prompt consideration to matters raised by the employees and/or their representatives in relation to the changes.
- b) The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in clause 31.1.
- c) For the purposes of such discussion, the employer must provide in writing to the employees concerned and their representatives, if any, which may be the union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests.

### **32. Consultation about Changes to Rosters or Hours of Work**

32.1 Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, which may include their union, about the proposed change.

32.2 The employer must:

- a) provide to the employee or employees affected and their representatives, if any, all relevant information about the proposed change, provided that no employer is required to disclose confidential information the disclosure of which would be contrary to the employer's interests;
- b) invite the employee or employees affected to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities);
- c) commence the consultation as early as practicable; and
- d) give prompt consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.
- e) An employer or employee may appoint a representative for the purposes of this clause. The identity of the representative must be advised to the other party.

32.3 Further to subclauses 32.1 and 32.2, the following applies;

- a) The requirement to consult under this clause does not apply where an employee has irregular, sporadic or unpredictable working hours.
- b) These provisions are to be read in conjunction with other Agreement provisions concerning the scheduling of work and notice requirements.

### 33. Redundancy

33.1 For the purposes of this clause, "continuous service" shall be interpreted in the same manner as "service of a worker" is interpreted in the *Long Service Leave Act 1955* (NSW) as at the date this Agreement comes into operation. Periods of leave without pay, including parental leave without pay, do not break the continuity of service of an employee but are not to be taken into account in calculating length of service for the purposes of this clause.

33.2 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.

33.3 Unless the FWC subsequently orders otherwise pursuant to sub-clause 33.4, where the employment of an employee is to be terminated for the reason set out in sub-clause 33.2, the employer shall pay, in addition to other payments due to that employee, the following retrenchment pay in respect of the following continuous periods of service:

- a) Where the employee is under 45 years of age, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	7 weeks' pay

3 years and less than 4 years	10 weeks' pay
4 years and less than 5 years	12 weeks' pay
5 years and less than 6 years	14 weeks' pay
6 years and over	16 weeks

b) Where the employee is 45 years of age or over, the employer shall pay the employee in accordance with the following scale:

Minimum Years of Service	Retrenchment Pay
Less than 1 year	Nil
1 year and less than 2 years	5 weeks' pay
2 years and less than 3 years	8.75 weeks' pay
3 years and less than 4 years	12.5 weeks' pay
4 years and less than 5 years	15 weeks' pay
5 years and less than 6 years	17.5 weeks' pay
6 years and over	20 weeks

33.4 Subject to an application by the employer and further order of the FWC the employer may pay a lesser amount (or no amount) of retrenchment pay than that contained in the subclause 33.3. The FWC shall have regard to such financial and resources of the employer concerned by FWC as thinks relevant, and the probable effect paying the amount of retrenchment pay in sub-clause 33.3 will have on the employer.

33.5 Provided that where a Deputy Director of Nursing or Assistant Director of Nursing has their position made redundant and they are offered an alternative position at a lower rate of pay which they do not accept they shall be paid the full entitlement contained in sub-clause 33.3 and the employer may not make application to the FWC under this subclause.

### **34. Workload Management**

34.1 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. The employer is committed to resident safety and providing a safe workplace for all employees and is committed to ensuring appropriate staffing levels are in place.

34.2 To ensure that employee concerns involving excessive workloads are effectively dealt with by Management the following procedures should be applied, with each step taking place within a reasonable timeframe:

- 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 any proposed solutions will be recorded in writing and fed back to the affected employees.
  - e) Employee/s may be represented by the union for the purposes of this clause.
- 34.3 If the issue is still unresolved, the employee/s may advance the matter through Clause 44 Grievance and Dispute Resolution Procedures.
- 34.4 On a quarterly basis the employer will hold a meeting where, among other matters, issues of workload can be raised and discussed.
- 34.5 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 Residence layout;
  - c) Statutory obligation, (including, but not limited to, work health and safety legislation);
  - d) The requirements of nurse regulatory legislation;
  - e) Reasonable workloads (such as roster arrangements);
  - f) Accreditation standards; and
  - g) Budgetary considerations.

### **35. Labour Flexibility and Mixed Functions**

- 35.1 The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training
- 35.2 The employer may direct an employee to carry out such duties and use such tools and equipment as may be required, provided the employee possesses the relevant skills and competence to perform such tasks. Where the employee does not possess such skills and competence, appropriate training shall be facilitated.
- 35.3 Any direction issued by the employer pursuant to sub-clauses 35.1 and/or 35.2 shall be consistent with the employer's responsibility to provide a safe and healthy working environment for employees, and the employer's duty of care to residents and/or clients.
- 35.4 Where an employer has decided there is no longer a requirement for a Deputy Director of Nursing or an Assistant Director of Nursing to be appointed in a workplace, the employer shall ensure that the workload previously performed by that nurse manager is adequately allocated to other management staff, and that the workloads of all other nurses on the nursing care roster within that

workplace will remain consistent with their substantive role, duties and classifications.

### **36. Salary Packaging**

- 36.1 Where agreed between the employer and an employee, the employer may introduce salary packaging. The terms and conditions of such a package may make provision for a salary greater than that contained in the salary band. The package overall shall not be less favourable than the entitlements otherwise available under this Agreement on a global or overall basis and shall be subject to the following provisions:
- a) the employer shall ensure that the structure of any package complies with taxation and other relevant laws;
  - b) the employer shall confirm in writing to the employee the classification level and the current salary payable as applicable to the employee under this Agreement;
  - c) the employer shall advise the employee in writing of his or her right to choose payment of that salary referred to in sub-clause (b) above instead of a remuneration package;
  - d) the employer shall advise the employee, in writing, that all Agreement conditions, other than the salary and those conditions as agreed in sub-clause (e) below shall continue to apply;
  - e) when determining the remuneration package, the non-salary fringe benefit shall be in accordance with relevant Australian Taxation Office legislation;
  - f) a copy of the agreement shall be made available to the employee;
  - g) the employee shall be entitled to inspect details of the payments made under the terms of this agreement;
  - h) the configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer;
  - i) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, an unused amount may be carried forward to the next period, or paid as salary which will be subject to usual taxation requirements;
  - j) remuneration packaging is only offered on the strict understanding and agreement that in the event existing taxation law is changed regarding Fringe Benefit Tax or personal tax arrangements, and that change may impact on this agreement, all salary packaging arrangements may at the discretion of the employer be terminated. Upon termination in these circumstances the employee's rate of pay will revert to the rate of pay that applied immediately prior to a salary packaging agreement made pursuant to this clause, or the appropriate Agreement rate of pay whichever is greater;

- k) where changes are proposed to salary packaging arrangements other than to flow on wage increases, or salary packaging arrangements are to be cancelled for reasons other than legislative requirements, then the employer and/or the employee must give three months' notice of the proposed change;
- l) in the event that an employee ceases to be employed by the employer this agreement will cease to apply as at the date of termination and all leave entitlements due on termination shall be paid at the rates in accordance with sub-clause (b) above. Any outstanding benefit shall be paid on or before the date of termination; and
- m) any pay increases granted to employees under this Agreement shall also apply to employees subject to remuneration packaging arrangements within this clause.

### **37. Superannuation**

- 37.1 The employer will make superannuation contributions into an approved Superannuation Fund nominated by the employee in accordance with the Superannuation Guarantee (SG) legislation as varied from time to time.
- 37.2 An 'approved fund' means:
  - a) the current employer nominated default fund of Health Employees' Superannuation Trust Australia (H.E.S.T.A.); or
  - b) any agreed complying superannuation fund; provided that the employer shall not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of agreement.
  - c) 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 a MySuper product or is an exempt public super fund.
- 37.3 An employee will nominate one approved fund to which all statutory superannuation contributions shall be paid.
- 37.4 Should an employee fail to nominate a fund, the employer will choose the above approved default fund (HESTA) into which contributions shall be paid under this Agreement.
- 37.5 The superannuation contributions will be paid at ordinary pay, which for the purpose of this Agreement includes ordinary time worked on public holidays and public holiday loadings.
- 37.6 Contributions:
 

The employer shall make, in respect of all qualified employees, superannuation contributions into an approved fund on a monthly basis.
- 37.7 Salary Sacrifice to Superannuation

- a) An employee can elect to sacrifice a portion of salary to superannuation. Such election must be made prior to the commencement of the period of service to which the earnings relate and be in accordance with relevant legislation.
- b) Salary sacrifice to superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre-tax dollars). This will give the effect of reducing the taxable income by the amount for salary sacrifice.
- c) Employers will not use any amount that is salary sacrificed by an employee to count towards the employer's obligation to pay contributions under the SG legislation.
- d) Contributions payable by the employer in relation to the SG legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- e) Any additional superannuation contributions made in accordance with this clause shall be paid into the same superannuation fund that receives the employer's SG contributions.
- f) Any allowance, penalty rate, overtime payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post-salary sacrificed amount.

### **38. Attendance at Meetings**

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

### **39. Training**

- 39.1 Employees will be given access to training relevant to their roles and responsibilities. The employer will provide up to three (3) days of paid training per calendar year to assist with ensuring employees are able to meet mandatory New Horizons and Continuing Professional Development requirements.
- 39.2 Each employee shall provide to the employer details of their attendance at training and the employer shall keep a record of this attendance.

- 39.3 Upon termination of the employee's employment the employer shall provide to the employee a written statement of the hours of training attended by the employee.
- 39.4 Where practicable, such training shall be provided to employees during their normal rostered hours of work. Where this is not practicable:
- a) Employees shall attend training outside their normal rostered working hours when required and approved to do so by the employer;
  - b) The employer shall provide employees with two (2) weeks' notice of the requirement to attend training outside of their normal rostered working hours;
  - c) Attendance at such training shall be paid as per the appropriate rate of pay for the period of training.
  - d) The employer requiring an employee to attend training shall also pay to the employee ordinary pay for time travelling to and from a period of training referred to in sub-clause (c) that is in excess of the time normally taken for that employee to attend work.
  - e) When receiving travelling time as set out in sub-clause (d), an employee using his or her own vehicle for attendance at such training shall be paid the per kilometre allowance set out in Item 2 of Table 1 of Schedule C to this Agreement.
  - f) Training provided outside the normal rostered hours of work shall be arranged so as to allow full-time employees to have at least eight or ten hours off-duty before or after training and the end or beginning of their shift, whichever is applicable as set out in Clause 14.2 - Arrangement of Hours. Where practicable, similar arrangements should also be made available to all other employees.
  - g) Any training undertaken by an employee that occurs at a workplace is not intended to replace or supplement staffing levels and the normal levels of service delivery at such a workplace.
  - h) Notwithstanding sub-clause 14.3 - Minimum Starts, Clause 17 - Overtime will not apply where attendance at such training is outside the normal rostered working time of other than full-time employees and where it interrupts the applicable eight or ten hour break between shifts.

#### **40. Continuing Professional Development (CPD)**

- 40.1 The employer commits to the professional development of employees where it is within the scope of the employee's role and is deemed to meet the needs of the employer.
- 40.2 The employer will assist to facilitate access to professional development opportunities by allowing flexibility of rostering and applications for leave. Where such professional development is reasonable, approval will be subject to the operational needs of the facility.

## **41. Amenities**

- 41.1 The minimum standards as set out in all relevant occupational health and safety legislation shall be met in the provision of amenities to employees.
- 41.2 Such amenities may include:
- a) change rooms and lockers;
  - b) meal room;
  - c) facilities for boiling water, warming and refrigerating food and for washing and storing dining utensils;
  - d) rest room;
  - e) washing and bathing facilities;
  - f) sanitary conveniences; and
  - g) safe and secure workplace.
- 41.3 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

## **42. Inspection of Lockers**

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.

## **43. Flexible Work Arrangements**

- 43.1 Employees may request flexible employment arrangements in accordance with the provisions of the NES.
- 43.2 In the following are the circumstances:
- a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
  - b) the employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
  - c) the employee has a disability;
  - d) the employee is 55 or older;
  - e) the employee is experiencing violence from a member of the employee's family;
  - f) the employee provides 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 the member is experiencing violence from the member's family.

- 43.3 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.
- 43.4 The request must:
- a) be in writing; and
  - b) set out details of the change sought and of the reasons for the change.
- 43.6 The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.

#### **44. Grievance and Dispute Resolution Procedures**

- 44.1 Unless otherwise stated the terms "party" or "parties" referred to in this clause means the employer and/or the employees, as the context requires.
- 44.2 This dispute resolution procedure will apply to disputes about
- a) any matters arising in the employment relationship, except matters relating to the actual termination of employment of an employee;
  - b) threatened termination, with the exception that the arbitration provisions in subclause 44.6 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;
  - c) matters in relation to the NES;
  - d) matters arising under the agreement; and
  - e) whether an employer had reasonable business grounds under subsection 65(5) of the Act - (requests for flexible working arrangements) or 76(4) of the Act - (requests for extending unpaid parental leave).
- 44.3 An employer or employee may appoint another person, organisation or association (e.g. the union or the Aged & Community Services Association of NSW & ACT Inc.) to accompany and/or represent them for the purposes of this clause.
- 44.4 In the event of a dispute the parties will initially attempt to resolve the matter at the workplace level, 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).
- 44.5 If a dispute is unable to be resolved at the workplace, in accordance with subclause 44.4, a party to the dispute may refer the matter to the FWC or other appropriate statutory tribunal.
- 44.6 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 mediation, conciliation and, arbitration.
- 44.7 While the dispute resolution procedure is being conducted, work must continue in accordance with this agreement and the Act. Subject to applicable workplace 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.
- 44.8 For the avoidance of doubt, this Dispute Resolution Procedure shall apply to any dispute relating to Flexible Working Arrangements and/or applications for extended parental leave under the NES.

## **45. Union Delegates**

- 45.1 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.
- 45.2 The employer will recognise two union representatives from each Union, upon receipt of written notification from the Union.
- 45.3 A union representative will be released from work to attend union business in accordance with the following:
- a) up to six paid (6) days per calendar year per Union to attend training facilitated by the Union and/or to attend the Union Annual Conference (subject to (b) below);
  - b) the total of 6 days paid leave per calendar year may be divided between the representatives of the Union at the Union's discretion, up to a maximum of 3 days per individual representative.
  - 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.
- 45.4 The notice must specify the time and nature of the union business; subject to operational requirements an employer shall not unreasonably refuse such a request.
- 45.5 In addition to clause 45.3(c) a union representative may access leave without pay, Annual Leave or Long Service Leave, for the purposes of attending such training. This will be subject to the prior approval as per clause 45.3(c).



- 45.6 A union representative 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 union representative.

## **SCHEDULE A- Employment Classifications**

This Schedule contains the following employment classifications and definitions:

### **1. NURSES' EMPLOYMENT CLASSIFICATIONS**

The following employment classifications and definitions apply to this Agreement:

**Assistant in Nursing** means a person, other than a registered nurse, trainee or enrolled nurse or Care Service Employee who is employed in nursing duties in a residential aged care facility.

**Assistant in Nursing -Team Leader** means an employee who holds either a Certificate Level IV in Aged Care Work or other appropriate Qualifications/Experience acceptable to the employer who is designated by the employer as having the responsibility for leading, mentoring and/or supervising the work of other Assistants in Nursing.

**Assistant Director of Nursing means (Registered Nurse Level 4):**

- (a) A person appointed as such in any sized facility and includes a person appointed as the nurse in charge during the evening or night in a facility where the adjusted daily average of occupied beds is not less than 150.
- (b) A person appointed as such to a position approved by the employer including persons appointed to be in charge of a ward or group of wards.

**Clinical Nurse Consultant (Registered Nurse level 3)** 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.

**Clinical Nurse Educator (Registered Nurse Level 2)** means a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and evaluate educational programmes at the residential aged care facility. The Clinical Nurse Educator shall cater for the delivery of clinical nurse education at the residential aged care facility. The

**Clinical Nurse Educator** may also be responsible for new employee orientation at the residential aged care facility. A nurse will achieve Clinical Nurse Educator status on a personal basis by being required by the residential aged care facility to provide the educational programmes detailed above. Nothing in this clause shall affect the role carried out by the Clinical Nurse Specialist as a specialist resource and the Clinical Nurse Consultant in the primary role of clinical consulting, researching etc.

**Clinical Nurse Specialist (Registered Nurse 2) means:**

- (a) In residential aged care facilities where there are 250 or more beds: A registered nurse with specific post registration qualifications and twelve months experience working in the clinical area of her or his specified post registration qualification; or a registered nurse with four years post registration experience in a specific clinical area and working in the clinical area of her or his specified post registration experience.
- (b) In residential aged care facilities where there are less than 250 beds:

A registered nurse with specific post registration qualifications and twelve months experience working in the clinical areas of her or his specified post registration qualification.

**Deputy Director of Nursing (Registered Nurse 4)** means a registered nurse appointed to assist the Director of Nursing in the management of a Nursing Home and take a shared responsibility for the clinical care of residents when the employer deems that assistance is required.

**Director of Nursing (Registered Nurse 5)** means a registered nurse who is appointed in accordance with the requirements of the Public Health Act 2010 as being responsible for the overall care of the residents of the nursing home. The Director of Nursing must hold minimum necessary qualifications as required by the Public Health (General) Regulation 2002.

**Enrolled Nurse (EN)** means a nurse enrolled with the Board who is authorised to administer medications.

Upon being authorised to administer medications by the Board an employee will be classified as an EN.

- (a) Where an employee was previously classified as an EN (without medication qualification) -Thereafter the employee will be paid as an EN-Authorised level (b).
- (b) Where an employee was not previously classified as an EN (without medication qualification) -Thereafter the employee shall be paid at level (a)
- (c) An employee classified at level (a) who is not required to deliver medication shall be entitled to progress to level (b) after one year's service.
- (d) Once an EN has worked 1000 hours in a role where they are required to deliver medication, the employee will be classified and paid at the EN Year I rate and thereafter be entitled to progress to the second and third years of that salary scale.
- (e) An EN may be required to lead and/or supervise the work of others. Upon being authorised to administer medications by the Board an employee will be classified as an EN.

**Nurse Educator (Registered Nurse 3)** means a registered nurse with a post registration certificate, who has relevant experience or other qualifications deemed appropriate by the employer, and who is appointed to a position of Nurse Educator. A Nurse Educator shall be responsible for the development, implementation and delivery of nursing education programmes within a

residential aged care facility or group of residential aged care facilities. Nurse education programmes shall mean courses conducted such as post registration certificates, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses.

- (a) A person appointed to a position of Nurse Educator who holds relevant tertiary qualifications in education or tertiary post graduate specialist clinical nursing qualifications shall commence on the 3rd year rate of the salary scale.
- (b) A person appointed as the sole nurse educator for a group of residential aged care facilities shall be paid at the 3rd year rate of the salary scale

Incremental progression for Nurse Educators shall be on completion of 12 months satisfactory full time equivalent service, provided that progression shall not be beyond the 3rd year rate unless the person possesses the qualifications detailed in paragraphs (a) and (b). Persons appointed to the 3rd year rate by virtue of those paragraphs shall progress to the 4th year rate after completion of 12 months satisfactory full time service.

**Registered Nurse (RN) (Registered Nurse Level 1)** means a person registered by the Board as such.

**Senior Nurse Educator (Registered Nurse 4)** means a registered nurse with a post registration certificate or appropriate qualifications, who has, or is working towards, recognised tertiary qualifications in education or equivalent and has demonstrated experience and skills in the field of education, and who is appointed to a position of Senior Nurse Educator. A Senior Nurse Educator shall be responsible for one or more Nurse Educators in the planning, co-ordination, delivery and evaluation of educational programmes such as post registration certificate courses, continuing nurse education, orientation programmes including new graduate programmes, post enrolment courses for enrolled nurses and where applicable general staff development courses either in a residential aged care facility or in a group of residential aged care facilities. Incremental progression shall be on completion of 12 months' satisfactory service.

**Student Enrolled Nurse** means a person who is being trained to become an enrolled nurse.

## 2. HOME CARE EMPLOYEES

### Home Care Employee – (New Entrant)

- (a) Qualifying period and training

This is a Trainee level, which applies to new employees with less than 6 months' experience in the industry or less than 250 hours' experience in Home Care but without previous relevant experience in personal care delivery.

New entrants employed prior to the date of approval of this agreement

whose rate of pay is above the new entrant rate of pay within this agreement will have that rate of pay preserved until such time as they are reclassified to a position above that of a New Entrant.

An employee at this level must have basic written and verbal communication skills and basic computer skills. The employer shall provide training and the employee shall work under direct and indirect supervision.

At the end of a period of six months or 250 hours' employment, whichever is first completed, employees who have satisfactorily completed the requirements of a New Entrant shall progress to Grade 1.

An opportunity may be given to the employee to be further trained in personal care. An employee trained in personal care may progress to Grade 2. Any progression to Grade 2 will be at the discretion of the employer.

Should an employee at this level not satisfactorily meet the requirements of a New Entrant, he/she shall be notified in writing by the employer two weeks prior to the date on which he/she would have proceeded to Grade 1.

**(b) Indicative Tasks**

Indicative but not exclusive tasks include:

- the undertaking of domestic work, including cleaning, vacuuming, dusting, washing and ironing, shopping, sweeping paths, preparation and cooking of meals, defrosting refrigerators, emptying and cleaning of commodes;
- assisting with banking and account payment, organising appointments, client activities, transporting clients, assistance with care of pets, and care of indoor and outdoor pot plants. Employees at this level must comply with documentation requirements as determined by the employer.

Indicative, but not exclusive tasks under indirect supervision include:

- providing assistance to clients 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.

Indicative, but not exclusive tasks under direct supervision include provision of assistance to a higher grade employee in attending to the personal care needs of a client.

**(c) Accountability and extent of authority**

An employee at this level performs broad tasks involving the utilisation of a range of basic skills in the provision of domestic assistance and simple

- personal care tasks and is responsible for the quality of their work.
- (d) Judgment and decision-making

Work activities are routine and clearly defined. The tasks to be performed may involve the use of a limited range of techniques and methods within a specified range of work. An employee may resolve minor problems that relate to immediate work tasks.

- (e) Interpersonal skills

Positions in this level may require basic oral communication skills and where appropriate written skills, with clients, members of the public and other employees.

- (f) Qualifications and experience

An employee in this level will have commenced on-the-job training which may include an induction course.

### **Home Care Employee - Grade 1**

Means a person who satisfies the requirements of a New Entrant and has progressed to Grade 1 or who is appointed to Grade 1 and is not a New Entrant. Employee's at this level work under indirect supervision in domestic services, gardening and maintenance not requiring trade skills and in carrying out simple personal care tasks. An employee at this level is required to assist the client to do personal care tasks for himself/herself and assist the client to maintain their independence in their own homes.

- (a) Indicative tasks

The indicative tasks are the same as a New Entrant except the employee has completed the qualifying period and training necessary to be Grade 1.

In addition to carrying the simple personal care tasks of a New Entrant a Grade 1 shall be required to monitor the personal care needs of clients: this includes but will not be limited to medication monitoring.

- (b) Accountability and extent of authority

An employee at this level is responsible for the quality of their work.

- (c) Judgment and decision-making

Are the same as a New Entrant.

- (d) Interpersonal skills

Are the same as a New Entrant.

- (e) Qualifications and experience

No formal qualifications necessary. An employee at this level will have completed all on-the-job training as required.

- (f) Specialist knowledge and skills

An employee at Grade 1 shall be competent to carry out the broad range of domestic and housekeeping duties and competent to carry out simple personal care tasks relevant to assisting clients to maintain their independence in their own homes.

This employee must possess relevant skill and competence to perform such tasks. Where the employee does not possess such skills and competence, further training may be provided.

## Home Care Employee - Grade 2

An employee at this level can perform the duties of a Home Care Employee Grade 1.

Employees at this level may be required to perform more complex tasks than a Grade 1 and, assist the client to do for himself/herself.

### (a) Indicative Tasks

The indicative tasks for an employee at this Grade are as follows:

**Showering/Bathing:** all aspects of showering/bathing including assisting with mobility or transferring to and from shower/bath; assisting or transferring client to commode chair; total bed bath/sponge except where there are severely limited/uncontrollable body movements or serious comfort/health consideration.

**Toileting:** Helping clients to the toilet; assisting clients to use the toilet by loosening clothing; changing or assisting clients to change their own incontinence and sanitary pads; assisting clients with bottles and pans; assisting self-catheterisation by holding mirror or positioning legs. Placement/removal/emptying/care/cleaning of sheaths and leg baths; assisting with indwelling catheterisation by changing collection bag and cleaning around the insertion site; changing or assisting with urinary diversion – colostomy and drainage bags; assisting with bowel management; continual caring of someone with bowel incontinence including washing the person and changing bowel incontinence pads.

**Menstrual Care:** Assisting with menstrual care including the changing of tampons and sanitary pads.

**Skin Care:** Application of topical treatment creams to the genital and other areas and the changing of wound dressings.

**Grooming:** All hair care; nasal and ear care; care of nails; shaving (except where there are uncontrollable body movements); all dressing/undressing or assistance with dressing/undressing except where there are severely limited/uncontrollable body movements.

**Oral Hygiene:** Assisting clients with their own oral care; care of teeth and dentures for the client.

**Medication:** Assisting client with or administering liquid medicines, pills, powders, nasal sprays and eye drops. Suppositories; assisting and supporting diabetic clients in the management of their insulin and diet and recognising the signs of both hyper and hypo-glycaemia.

**Transferring/Mobility:** Transferring client in and out of bed/chair/car and assisting with mobility; using mechanical aids to lift and transfer clients.

**Fitting of Aids/Appliances:** Such as hearing aids, splints and callipers.

**Therapy:** Assisting with therapy in any of the following circumstances:

- where low grade of assistance is required;
- where carer/therapist is or is not in attendance on site and client is able to take responsibility for the therapy or carer/therapist is on site;
- where simple instructions provided by a therapist or senior employee are required rather than specialised training knowledge.

**Assistance with Eating:** Assisting with feeding except where there is an assessed risk of choking, vomiting or other eating difficulties.

- (b) **Accountability and extent of authority**  
Employees perform work under indirect or limited direct supervision. Employees at this level have contact with the public or other employees, which involve explanations of specific procedures and practices. Employees at this level are accountable for the quality, quantity and timeliness of their own work in so far as available resources permit, and for the care of assets entrusted to them. Employees at this level may assist others in the supervision of the work of a New Entrant, Grade 1 or Grade 2.  
Judgment and decision-making

The nature of the work is clearly defined with established procedures well understood or clearly documented. Employees at this level are expected to use some originality in approach with solutions usually attributable to the application of previously encountered procedures and practices.

- (c) **Specialist knowledge and skills**  
In addition to performing the tasks of a Grade 1 employee, a Grade 2 employee is expected to provide all personal care (including supervising daily hygiene) and subsequent to competency based training and assessment as required, can carry out the fitting and removal of aids and appliances and medication tasks.
- (d) **Interpersonal skills**  
Are the same as New Entrant and Grade 1.
- (e) **Qualifications and experience**  
At a minimum, an employee at this level will have satisfactorily completed the requirements of a Grade 1.

Indicative but not exclusive of the qualifications required in this level include a Certificate III Individual Support (Ageing, Home and Community) or equivalent; or relevant experience/on-the- job training commensurate with the requirements of work in this level.

### **Home Care Employee - Grade 3**

An employee at this level can perform the duties of a New Entrant, Grade 1 and Grade 2 and is required to directly attend to a client's complex

needs, as opposed to assisting the client to do for himself/herself, because of the client's behaviour or the client's condition, frailty, and/or household environment.

Grade 3 employees may be involved in on-the-job training of Home Care Employees New Entrants, Grade 1 and 2 where required. Employees at this level will be designated by the employer as having the responsibility for leading/mentoring/training and/or supervising the work of others.

- (a) **Indicative Tasks**  
The indicative tasks for an employee at this Grade are all of the tasks of a New Entrant, Grade 1 or Grade 2 employee except that an employee at this level will be responsible for more complex personal care needs of clients having regard to whether the client suffers from severely limited/uncontrollable body movements or serious comfort/health considerations.
- (b) **Accountability and extent of authority**  
The same as a Grade 2 except that Employees at this level may be asked to assist others in the supervision of the work of a New Entrant, Grade 1, 2, or 3.
- (c) **Judgment and decision-making**  
The nature of the work is usually specialised, with established procedures and requiring personal judgement. An employee at this level will provide personal care and domestic assistance to clients with complex care needs. There is scope to exercise discretion in the application of established practices and procedures as the nature of the work is clearly defined, understood or clearly documented. Employees at this level shall exercise some originality in approaching problems with solutions usually attributable to application of previously encountered procedures.
- (d) **Specialist knowledge and skills**  
Indicative but not exclusive tasks include: administrative and computer skills; process and record invoices and correspondence; prepare meals for special functions; provide input into meal planning; order foodstuffs and commodities; liaise with dieticians on special needs; schedule work programs on a routine and regular basis; co-ordinate and direct the work of support employees including maintenance (no more than four); oversee the provision of domestic services; provide personal care to clients with particular emphasis on those requiring extra help due to specific physical problems or frailty; schedule maintenance work programs on a routine and regular basis; plan, develop, and coordinate diversional therapy programs and attending to elementary household maintenance requirements.
- (e) **Interpersonal skills**  
Are the same as New Entrant, Grade 1 and 2.
- (f) **Qualifications and experience**



Indicative but not exclusive of the qualifications required in this level is an accredited qualification to the position at the level of Certificate III and/or knowledge and skills gained through on-the-job training commensurate with the requirements of the special needs for this level of care.

### **Home Care Coordinator - Grade 1**

(a) Accountability and extent of authority

Employees are expected to exercise discretion within standard practices and processes, undertaking and implementing quality control measures. Positions in this level may provide direction, leadership, administration and rostering of direct care employees. An employee at this level is required to work individually with limited direct or indirect supervision.

(b) Judgment and decision-making

The objectives of the work are well defined but the particular method; process of equipment to be used; must be selected from a range of available alternatives. For employees undertaking rostering duties, the process often requires the quantification of the amount of resources needed to meet those objectives.

(c) Specialist knowledge and skills

- Employees will be required to plan, direct and train subordinate employees. Employees are also required to have a thorough understanding of the relevant technology, procedures and processes used within their operating unit.
- Indicative but not exclusive of the skills required include: the manipulation of data - e.g. modify fields of information and create spreadsheets; create new forms of files or records using a computer based records system; access and extract information from external sources e.g. local authorities; roster employees and direct work programs; oversee the work and training of lower level employees; provide guidance and counselling; assist in the development of budgets; order consumables and routine stock items used in domestic support areas; develop client care plans and oversee the provision of domestic services.

(d) Interpersonal skills

Positions in this level require the ability to gain co-operation and assistance from members of the public and other employees in the performance of well-defined activities. Employees in this level may also be expected to write reports in their field of expertise.

(e) Qualifications and experience

Indicative but not exclusive of the qualifications required in this level is an accredited qualification to the position at the level of Certificate III and/or knowledge and skills gained through on-the-job training commensurate

with the requirements of the work in this level.

## **Home Care Coordinator - Grade 2**

An employee at this level includes all of the duties of a Home Care Co-ordinator – Grade 1. A position in this level has the following characteristics:

- (a) Accountability and extent of authority
  - Positions in this level may co-ordinate resources and/or give support to more senior employees or be engaged in duties of a specialist nature. In positions where the prime responsibility is for resource co-ordination, the freedom to act is governed by clear objectives and/or budgets with frequent prior consultation with more senior employees and a regular reporting mechanism to ensure adherence to plans.
  - Whatever the nature of the position, employees in this level are accountable for the quality, effectiveness, cost and timeliness of the programs, projects or work plans under their control and for the safety and security of the assets being managed.
  - Employees with co-ordination responsibilities are also required to ensure that all employees under their direction are trained in safe working practices and in the safe operation of equipment and are made aware of all occupational health and safety policies and procedures.

- (b) Judgment and decision-making

In these positions, the objectives of the work are usually well defined but the particular method, technology, process or equipment to be used must be selected from a range of available alternatives. However, problems in this level are often of a complex or technical nature with solutions not related to previously encountered situations and some creativity and originality is required. Guidance and counsel may be available within the time available to make a choice.

- (c) Specialist knowledge and skills

Co-ordinators in this level require a thorough understanding of the relevant technology, procedures and processes used within their operating unit. Co-ordinators are required to have an understanding of the function of the position within its organisational context, including relevant policies, regulations and precedents. Positions in this level may provide direction, leadership and structured training or on-the-job training to supervised employees or groups of employees.

- (d) Management skills

- These positions require skills in managing time, setting priorities and planning and organising one's own work and that of supervised employees so as to achieve specific and set objectives in the most efficient way possible within the resources available

and within a set timetable.

- The position requires an understanding of and ability to implement basic personnel policies and practices including those related to equal employment opportunity, occupational health and safety and employees' training and development.

(e) Interpersonal skills

Positions in this level require the ability to gain co-operation and assistance from clients, members of the public and other employees in the administration of defined activities and in the supervision of other employees or groups of employees. Employees in this level are expected to write reports in their field of expertise and to prepare external correspondence of a routine nature.

(f) Qualifications and experience

The skills and knowledge needed for entry to this level are beyond those normally acquired through completion of a TAFE certificate IV or associate diploma alone. They might be acquired through completion of a degree or diploma course with little or no relevant work experience, or through lesser formal qualifications with relevant work skills, or through relevant experience and work skills commensurate with the requirements of work in this level.

## SCHEDULE B- Minimum Hourly Wages

### Minimum Hourly Wages

These minimum hourly wages will apply from the commencement of the first full pay period on or after:

- (a) 1/7/2018 in respect of Column 1;
- (b) 1/7/2019 in respect of Column 2;
- (c) 1/7/2020 in respect of Column 3;

Classification	Column 1 (2%)	Column 2 (2.5%)	Column 3 (2%)
<b>Assistant in Nursing</b>			
Pay Point 1 <sup>st</sup> year	21.81	22.36	22.80
Pay Point 2 <sup>nd</sup> year	22.17	22.72	23.18
Pay Point 3 <sup>rd</sup> year	22.54	23.10	23.56
With qualification (Cert III)	22.70	23.26	23.73
With qualification (Cert IV)	24.23	24.83	25.33
Team Leader	25.26	25.89	26.40
<b>Enrolled Nurse without medication qualification</b>			
Pay Point 1 <sup>st</sup> year	24.87	25.49	26.00
Pay Point 2 <sup>nd</sup> year	25.38	26.01	26.53
Pay Point 3 <sup>rd</sup> year	25.95	26.60	27.13
Pay Point 4 <sup>th</sup> year	26.48	27.14	27.68
Pay Point 5 <sup>th</sup> year and thereafter	27.06	27.74	28.29
<b>Enrolled Nurse</b>			
Pay Point 1 <sup>st</sup> year	27.77	28.47	29.04
Pay Point 2 <sup>nd</sup> year	28.43	29.14	29.72
Pay Point 3 <sup>rd</sup> year	29.10	29.83	30.42

Nurses undergoing pre-registration assessment	24.30	24.90	25.39
<b>Registered Nurse</b>			
Level 1*			
Pay point 1	31.24	32.02	32.66
Pay point 2	33.15	33.98	34.66
Pay point 3	35.15	36.03	36.75

Pay point 4	37.31	38.24	39.01
Pay point 5	39.59	40.58	41.39
Level 2 (incl. CNS, CNE)	41.21	42.24	43.08
Level 3 (incl. CNC, NE)	48.65	49.87	50.87
Level 4 Incl. Snr Nurse Educator			
Pay point one	49.81	51.06	52.08
Pay point two	50.84	52.11	53.15
Pay Point three	52.55	53.86	54.94
Adon (DDon)	45.11 48.32	46.24 49.52	47.17 50.52
Level 5 (Don)	58.83	60.30	61.51

Home Care employees

<b>Classification</b>	<b>Column 1 (2%)</b>	<b>Column 2 (2.5%)</b>	<b>Column 3 (2%)</b>
<b>Level 1-</b> pay point 1	\$21.40	\$21.93	\$22.37
<b>Level 2 -</b> Pay point 1	\$22.68	\$23.25	\$23.72
pay point 2	\$22.84	\$23.41	\$23.88
<b>Level 3 -</b> Pay point 1	\$23.15	\$23.73	\$24.21
pay point 2	\$23.86	\$24.45	\$24.94
<b>Level 4-</b> Pay point 1	\$22.26	\$25.89	\$26.40
pay point 2	\$25.77	\$26.41	\$26.94
<b>Level 5 -</b> Pay Point 1	\$27.08	\$27.76	\$28.31
pay point 2	\$28.14	\$28.85	\$29.42

**Table 2 - Allowances**

Clause No: Sec 20	Allowance Name	New Horizons rate
cl. 20.1	In charge allowance a) < 100 beds/> 100 beds b) Aged Care section	a) 37.91 per shift/23.53 per shift b) 23.53 per shift
cl. 20.2	Vehicle/travelling allowance	.78c per km
cl. 20.3	Uniforms allowance (includes socks/stockings allowance)	\$1.816 per shift or \$9.08 per week
cl. 20.3	Shoes	\$.434 per shift or \$2.17 per week
cl. 20.3	Laundry	\$1.164 per shift or \$5.82 per week
cl. 20.4	On call allowance a) Mondays to Fridays b) Saturdays c) Sundays, public holidays or non-rostered day	\$ per 24 hour period or part thereof a) \$22.09 b) \$33.27 c) \$38.81
cl. 20.5	Medication allowance – AIN's	\$29.5 per week
cl. 20.6	Continuing education allowance	g) \$19.76 per week h) \$32.91 i) \$39.48 j)13.16
cl. 20.8	On call meal allowance	\$ 6.00
cl. 20.8	Meal Allowance 1. Breakfast 2. Lunch 3. Dinner	1. \$13.68 2. \$17.70 3. \$25.83

**Table 3 - Shift Penalties**

<b>Shift</b>	<b>Full time</b>	<b>Part time</b>	<b>Casual</b>
Afternoon commencing not earlier than 12 noon finishing after 6:00 pm	12.50%	12.50%	12.50%
Night shift commencing at or after 4:00pm and finishing before 7:30am	15%	15%	15%
Midnight Friday -midnight Saturday	50%	50%	50%
Midnight Saturday - Midnight Sunday	75%	75%	75%
Public Holiday	250% for work performed	250% for work performed	250% (225% plus casual loading)



**SIGNATURE PAGE**

**New Horizons**

Signed for New Horizons by: Peter Carter  
Position: Chief Executive Officer  
Address: 15 Twin Road, North Ryde NSW 2113

The basis of on which the signatory is  
authorised to sign on behalf of New Horizons: CEO of New Horizons

Signature:



Date:

6/11/2019

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**Employee Bargaining representative**

Signed by: Colin George Wilkie  
Position: union delegate. NSW Assistant in Nursing -  
Address: 53-63 Baulkley Rd  
Nth Ryde.

The basis of on which the signatory is  
authorised to sign: Employee bargaining representative

Signature:

CJ Wilkie

Date:

11/11/2019

## IN THE FAIR WORK COMMISSION

**FWC Matter No.:**  
AG2019/4312

**Applicant:**

NEW HORIZONS ENTERPRISES LIMITED

Section 185 – Application for approval of a single enterprise agreement

### Undertaking- Section 190

I, Peter Carter, Chief Executive Officer for New Horizons Enterprises Limited give the following undertakings with respect to the *New Horizons Aged Care and NSWNMA/ANMF Enterprise Agreement 2018-2021* ("the Agreement"):

1. I have the authority given to me by New Horizons Enterprises Limited to provide this undertaking in relation to the application before the Fair Work Commission.
2. In relation to subclause 18.2, I undertake that the subclause will be deleted and replaced with the following:
  - 18.2 Home Care Employees shall be paid the following penalties, calculated on their ordinary pay, for shifts rostered in accordance with the following:
    - (a) Shift penalties:
      - (i) 10% for afternoon shift commencing at 10:00am and before 1:00pm.
      - (ii) 12.5% for afternoon shift commencing at 1pm and before 4pm.
      - (iii) 15% for night shift commencing at 4pm and before 4am.
    - (b) Home Care Employees who work less than 38 hours per week will only be entitled to the shift penalties set out in subclause 18.2(a)(i) to (iii) above where their shift commences prior to 6:00am or finishes after 6:00pm.
    - (c) 150% for ordinary hours worked between midnight Friday and midnight Saturday; and
    - (d) 175% for ordinary hours worked between midnight Saturday and midnight Sunday.
    - (e) The weekend penalty rates in set out in subclause 18.2(c) and (d) will be in substitution for and not cumulative on the shift penalties as set out in subclause 18.2(a).
    - (f) An employee who is required to and does work on any public holiday shall be paid, in lieu of all other shift penalties, weekend penalties, casual loading, as follows:
      - (i) Full-time employees – in addition to their ordinary pay, an additional payment equal to 150% for hours worked. Alternatively, if the employee elects, the same number of hours worked added to their annual leave.

- (ii) Part-time employees – in addition to their ordinary pay, an additional payment equal to 150% for hours worked. Alternatively, if the employee elects, the same number of hours worked added to their annual leave.
- (iii) Casual employees – 250% for hours worked.

3. In relation to subclause 39.4(h), I undertake that where a part-time and casual employee is required to attend training where the circumstances in subclauses 17.1(b) and 17.1(c) of the Agreement applies, they will be paid overtime rates in accordance with subclause 17.2 of the Agreement.
4. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.



**Signature**

5 December 2019

**Date**