



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

The Northcott Society
(AG2021/3943)

NORTHCOTT ENTERPRISE AGREEMENT 2021 – 2023

Social, community, home care and disability services

COMMISSIONER WILSON

MELBOURNE, 5 JULY 2021

Application for approval of the Northcott Enterprise Agreement 2021 - 2023.

[1] In a decision dated 28 May 2021, I found that I could not be satisfied there was genuine agreement for the making of the *Northcott Enterprise Agreement 2021 – 2023* (the Agreement) because of three errors identified in the decision (referred to as the First Decision).¹ I indicated in the decision that it was my preliminary view that each error was of the type that may be the subject of an exercise of discretion by the Commission under s.188(2) of the *Fair Work Act 2009* (the Act).

[2] The same decision also found that otherwise the statutory criteria for approval of the agreement had been met, subject to receiving undertakings from the Applicant, The Northcott Society (Northcott) pursuant to s.190.

[3] The errors identified may be summarised in the following way:

1. In relation to up to 90 casual employees:

- a. the possible failure to provide them with the information required by s.180(2) (referred to in this decision as the *Information Provision Error*);
- b. the failure to include the employees in Northcott's request under s.181 to the employees employed at the time who will be covered by the agreement to approve the agreement by voting for it (referred to as the *Voting Request Error*); and

2. An inaccuracy within Northcott's explanatory materials on the subject of travel expenses and its assertion that a relevant State Award had no equivalent provisions (referred to as the *Inaccurate Explanatory Materials Error*).

¹ [2021] FWC 2964.

[4] Each party was given an opportunity to provide submissions and other material about my preliminary view. Each of the Community and Public Sector Union (CPSU) and Northcott provided written submissions. Since no party sought to be heard on the subject these residual matters have been determined by me on the papers.

[5] Further each bargaining representative was invited to provide their views about the suitability of the undertaking submitted by Northcott in the course of the consideration of steps prior to the earlier decision. No bargaining representative expressed a view about the undertakings.

[6] The submissions provided by the CPSU contest whether the errors relating to the 90 casual employees are of the type for which a discretion may be exercised under s.188(2) however accept that the Inaccurate Explanatory Materials Error is of a type contemplated in the section. Northcott's submission advocated genuine agreement could be established under the section for each of the identified errors.

[7] The findings made about each of the errors in the first decision include the following:

- *Information Provision and Voting Request Errors*

“...Northcott was in error in excluding from the vote for the agreement up to 3 employees on long-term workers' compensation absences and 87 casual employees solely on the basis that they did not work during the Access Period and were not, as at 28 January 2021, rostered to work during the Voting Period.”²

This had two consequences:

“• First, I am not satisfied all employees were provided with the information required by s.180(2) or notified of the voting arrangements as required by s.180(3) or had the terms of the agreement and the effect of those terms explained to them (s.180(5)). In these regards, I note that it may be the case that ALL Northcott employees were provided with this information, and that the group of 90 casual employees excluded from voting nevertheless received the information, however the evidence on the subject is incomplete.

• Second, I am not satisfied all employees were requested to approve the agreement by voting for it since up to 90 casual employees were excluded.”³

- *Inaccurate Explanatory Materials Error*

- An information document provided to employees near to the start of the Access Period incorrectly stated there were no equivalent award provisions for a travel allowance.⁴

² Ibid, [80].

³ Ibid, [91].

⁴ Ibid, [97].

The Information Provision and Voting Request Errors

[8] The CPSU submit that neither the Information Provision Error or the Voting Request Error are of the type to which s.188(2) may apply. The focus of the union's submissions was that neither could be characterised as minor errors and that each may be found to result in disadvantage to the employees covered by the Agreement. Northcott submitted that each error was unintentional and capable of being found to be of the type contemplated in the section.

[9] The matters under consideration in this decision relates to the discretion provided to the Commission under s.188, the terms of which are thus:

“188 When employees have genuinely agreed to an enterprise agreement

(1) An enterprise agreement has been ***genuinely agreed*** to by the employees covered by the agreement if the FWC is satisfied that:

(a) the employer, or each of the employers, covered by the agreement complied with the following provisions in relation to the agreement:

(i) subsections 180(2), (3) and (5) (which deal with pre-approval steps);

(ii) subsection 181(2) (which requires that employees not be requested to approve an enterprise agreement until 21 days after the last notice of employee representational rights is given); and

(b) the agreement was made in accordance with whichever of subsection 182(1) or

(2) applies (those subsections deal with the making of different kinds of enterprise agreements by employee vote); and

(c) there are no other reasonable grounds for believing that the agreement has not been genuinely agreed to by the employees.

(2) An enterprise agreement has also been ***genuinely agreed*** to by the employees covered by the agreement if the FWC is satisfied that:

(a) the agreement would have been ***genuinely agreed*** to within the meaning of subsection (1) but for minor procedural or technical errors made in relation to the requirements mentioned in paragraph (1)(a) or (b), or the requirements of sections 173 and 174 relating to a notice of employee representational rights; and

(b) the employees covered by the agreement were not likely to have been disadvantaged by the errors, in relation to the requirements mentioned in paragraph (1)(a) or (b), or the requirements of sections 173 and 174.”

[10] The Full Bench found in *Huntsman Chemical Company Australia Pty Limited T/A RMAX Rigid Cellular Plastics & Others*⁵ (Huntsman) that s.188 had broad effect, noting the provision followed a Productivity Commission recommendation on the subject:

“[28] The enactment of s.188(2) had its genesis in Recommendation 20.1 of the Productivity Commission’s Workplace Relations Framework, Final Report which states:

‘The Australian Government should amend the Fair Work Act 2009 (Cth) to:

- allow the Fair Work Commission wider discretion to overlook minor procedural or technical errors when approving an agreement, as long as it is satisfied that the employees were not likely to have been placed at a disadvantage because of an unmet procedural requirement.
- extend the scope of this discretion to include minor errors or defects relating to the issuing or content of a notice of employee representational rights.’

[29] The Productivity Commission made the following comments in relation to Recommendation 20.1:

‘In cases where an undertaking is not feasible or would cause undue inconvenience, the FWC should have the discretion to determine whether a procedural defect did not materially affect the bargaining or approval process and therefore does not require an undertaking to remedy it. The key test for exercising discretion could be that the FWC is satisfied that employees were not likely to have been placed at a disadvantage during bargaining or the pre-approval process because of the unmet procedural requirement. The FWC should also have regard to the likely costs to the parties — including the employees — associated with further delaying approval of the agreement. To help maintain consistency and transparency for all parties, the FWC could develop and publish guidelines about how members should exercise their discretion with respect to procedural defects.

The goal of this proposed change is to resolve procedural inflexibilities and prevent minor procedural errors or defects in the bargaining process derailing an otherwise fundamentally sound agreement at the approval stage. Numerous inquiry participants, primarily employers and employer groups, were supportive of such a change. The capacity for the FWC to overlook minor procedural defects is also not without precedent — s. 461 of the FW Act currently allows a protected action ballot order (chapter 27) to be valid even if where there is a ‘technical breach’ of the provisions.

⁵ [2019] FWCFB 318.

Allowing the FWC the discretion to overlook a procedural defect without an undertaking should not be seen as an avenue to allow some employers to skirt procedural requirements in order to gain an edge during bargaining. Employers generally do not have an incentive to expose themselves to the FWC over procedural issues. It is also unlikely that a deliberate procedural error by an employer would both lead to a meaningful advantage in bargaining and yet also escape the scrutiny of the FWC.’

[30] It is apparent from the extrinsic material that s.188(2) was enacted in response to the Productivity Commission’s Recommendation 20.1. The Revised Explanatory Memorandum states the following in its overview of the amendments to s.188:

‘The PC Report recommended that the FWC should be able to overlook minor procedural or technical errors when approving an enterprise agreement, if it is satisfied that employees were not likely to have been disadvantaged by those errors. The PC Report also recommended that this be extended to the requirements relating to the Notice given under subsection 173(1) (Recommendation 20.1).’ (endnotes omitted)

[11] The matters within s.188(2) operate sequentially and in a confined manner:

“[35] We note at the outset that ss.188(1) and (2) are to be approached sequentially, that is to say the first question is whether the Commission is satisfied as to the matters at s.188(1)(a)–(c). If the Commission is so satisfied then the agreement has been genuinely agreed, and there is no need to consider s.188(2). The sequential nature of the approach to be taken is evident from the numbering of the subsections and the use of the expression ‘has also been’ in the prefatory words of s.188(2) and the expression ‘would have been ... but for’ in s.188(2)(a), which make it clear that s.188(2) provides an alternate pathway to that in s.188(1).

[36] It follows that s.188(2) is confined in its terms to circumstances where the Commission is not satisfied that an agreement has been genuinely agreed to within the meaning of s.188(1), as a result of ‘errors made in relation to the requirements mentioned in paragraph (1)(a) or (b), or the requirements of sections 173 and 174 relating to a notice of employee representational rights’. There is no express reference in s.188(1) to ss.173 and 174; rather, Commission authorities establish that strict compliance with the NERR timing and form and content requirements in ss.173 and 174 is necessary in order to meet the requirements ‘mentioned in paragraph (1)(a) and (b)’ of s.188(1).

[37] The important point for present purposes is that s.188(2) is engaged only where the Commission would have been satisfied that an agreement was ‘genuinely agreed’ to within the meaning of s.188(1) ‘but for’ errors made in relation to the ‘particular bargaining provisions’ mentioned in paragraphs (1)(a) or (b) (or ss.173 and 174). Section 188(2) does not extend to circumstances where the Commission is not satisfied that an agreement was genuinely agreed to in a more general sense, as might arise in considering s.188(1)(c).

[38] The reference to the ‘employees covered by the agreement’ in ss.188(1) and (2), is a reference to those employees employed and covered by the agreement at the time of the request to vote under s.181.”⁶ (endnotes omitted)

[12] When it comes to an exercise of discretion the Commission must be satisfied of both matters in s.188(2) with the requirements of s.188(2) (c) and (b) and the matters therein being cumulative requirements.⁷ After an analysis of the purpose of s.188(2) the Full Bench in Huntsman rejected the proposition the provision may only be used in relation to unintentional errors and considered the section may also apply to intentional acts:

“[74] As mentioned earlier, the determination of whether an error constitutes a ‘minor error’ within the meaning of s.188(2) calls for an evaluative judgment having regard to the underlying purpose of the relevant procedural or technical requirement which was not complied with and the relevant circumstances. Table 2 below (extracted from ACCI’s written submission at [61]) examines each of the procedural or technical requirements, considers the underlying purpose of these requirements and outlines some ways in which employees might be disadvantaged by a minor technical or procedural error.”

[13] So much of the Table 2 referred to in the passage above as is relevant to this decision is reproduced here:

Table 2:

Procedural or technical requirements covered by s. 188(2) and potential ways in which employees may be disadvantaged in relation to minor errors

Section	Procedural or Technical Requirement	Underlying Purpose of requirement	How might employees be disadvantaged?
188(1)(a)	Comply with subsection 180(2) - take all reasonable steps to ensure that relevant employees are given the written text of the agreement and any materials incorporated by reference during the access period OR that the relevant employees are given access to	To ensure employees have a reasonable chance to make an informed decision when voting	In the circumstances employees may not have had effective access to materials or insufficient time to consider them to make an informed decision when voting

⁶ Ibid.

⁷ Ibid, [43].

	these materials throughout the access period		
	Comply with subsection 180(3) - take all reasonable steps to notify the relevant employees of the time, place and method of vote, prior to the start of the access period	To ensure employees are able to attend and participate in the voting process (should they choose to do so)	In the circumstances employees might be unaware of the voting process occurring thus preventing them from effectively participating in the voting process
	Comply with subsection 180(5)(a) - take all reasonable steps to the terms of the agreement and their effects are explained to the relevant employees	Ensure that employees understand the effect of the agreement that is to be voted on, enabling them to make an informed decision	In the circumstances the steps may have been taken such that the employees might not be in a position to make an informed decision about the terms of the agreement upon which they are eligible to vote
	Comply with subsection 180(5)(b) - take all reasonable steps to ensure the explanation is provided in an appropriate manner taking into account the particular circumstances and needs of the relevant employees	Ensure that particular classes of employees are able to understand the agreement notwithstanding any particular circumstances or needs	In the circumstances the employees may have received the explanation in a language they do not speak thus they may not be in a position to make an informed decision when voting
	Comply with subsection 181(2) - the employer must not request that the employees approve a	To provide the employees with a minimum period of time for the	In the circumstances the period is cut short preventing the employees from effectively appointing bargaining

	proposed agreement until at least 21 days after the day on which the last NERR is given	bargaining process to occur before voting on an agreement	representatives and participating in genuine good faith bargaining
188(1)(b)	The agreement must be made in accordance with subsection 182(1) or (2)		

(NOTE: rows relating to ss.173 and 174 have been omitted).

[14] The CPSU notes the Information Provision Error is procedural⁸ and argues it is not of the type to which s.188(2) may apply:

“8. Whether an incidence of non-compliance is characterised as a ‘minor error’ also depends on the nature of the requirement which has not been complied with. For example, the need to inform employees of the time and date of the vote (s.180(3)(a)) is more significant than informing them of the ‘voting method’ (s.180(3)(b)) – the first requirement may impact on the employees’ capacity to participate in the voting process, the second may not.”

[15] Further it argues that being deprived of access to the material referred to is a substantial disadvantage for employees to make an informed decision when voting.⁹

[16] The CPSU argues about the Voting Request Error that failing “to afford the 90 employees a right to vote was not a minor error” and “this is not a matter that can be cured by s188(2). Disenfranchising such a large number of employees cannot be considered a minor procedural or technical error within the meaning of s188(2)(a). It is a substantial error.”¹⁰ With reference to the *Revised Explanatory Memorandum to the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Bill 2017 (Cth)*, the CPSU argues:

“20. Again, by reference to the extract of the *Revised Explanatory Memorandum* the failure to afford employees the right to vote is not contemplated in the examples of minor errors provided in the Explanatory Memorandum. The denial of the right to vote is by contrast with those examples clearly not a minor error.

21. Nor is the failure to afford the right to vote to employees contemplated in the comprehensive account of the type of minor or procedural and technical errors identified by the Full Bench in *Huntsman*. It is, to adopt the wording of the Full Bench

⁸ *Outline of Submissions of the CPSU on Section 188*, 4 June 2021, [7].

⁹ *Ibid*, [12] – [15].

¹⁰ *Ibid*, [17].

a deprivation which manifests in the employees covered by the agreement being prevented from substantively exercising their rights.

22. As the Full Bench in *Huntsman* pointed out, whether an error is a minor error will also depend on the nature of the requirement that has not been complied with by reference to the objects of the requirements.

The right to vote on an enterprise agreement is fundamental to the agreement making process. An agreement cannot be made unless a vote of employees occurs (s182(1)). Each of the pre-approval requirements in s180 are predicated on, and in preparation for, the relevant employees voting to approve the agreement. This suggests that the exclusion of a large number of relevant employees from the voting process cannot be considered a minor procedural or technical error.”

[17] In these regards the CPSU argues there is no fairness in denying a “large number of employees the right to vote on a proposed agreement”.¹¹ Neither will such denial promote the legislative objective confirmation of harmonious and cooperative workplace relations. Ignoring the rights of a large number of employees will instead promote disharmony,¹² with it also submitting:

“25. Further, the denial of a right to vote on the agreement disadvantaged the 90 employees who will be covered by the agreement. There was a clear disadvantage to those employees who were denied that right in being able to exercise a right in bargaining to vote on whether they approved the agreement. This factor is relevant both s188(2)(a) and (b): the question of whether the applicant’s failure was minor, and whether, if the Commission was satisfied that it was minor, whether it disadvantaged employees.”

[18] Northcott rejects the contentions that neither of the Information Provision or Voting Request Errors are unfair or other than minor. It argues the Commission’s findings in the First Decision were not of “90 employees [having] been denied the right to vote” with it instead being the case that “this characterisation ignores the Commission’s findings and observations about the circumstances in which these errors arose. In particular, that the Commission’s findings are in the nature of identifying “possible” errors and not being satisfied that there is sufficient evidence to conclusively determine whether or not up to 90 eligible employees were excluded.”¹³

[19] The submission is made that these matters flow from unintentional errors on Northcott’s part with the errors being of the type to which s.188(2) applies:

“21. Further, these were unintentional errors, that arose from:

(a) the complexities associated with applying the test for determining eligibility of casual employees to vote on an Agreement; and

¹¹ Ibid, [23]

¹² Ibid, [24].

¹³ *Outline of Submissions on Behalf of the Northcott Society*, 11 June 2021, [20].

(b) the "obvious practical difficulties" in seeking to meet the requirements of sections 180 and 181 of the FW Act where Northcott employs significant numbers of casual employees and operates various roster systems.

22. When the circumstances by which the casual employee errors arose and the circumstances of Northcott's business are considered as a whole, we submit that the Commission's preliminary view that the casual employee errors are of the type to which section 188(2) applies is correct and is in keeping with the principles set out in *Huntsman*.¹⁴

[20] Northcott also argue it is unknown how many of 90 casual employees may have been eligible to vote and that the focus of the Commission's attention should not be on that number but instead the provisions of s.188(2)(b) which invites a broader question to be answered, namely of whether "the employees covered by the agreement were not likely to have been disadvantaged by the errors".¹⁵ It argues with reference to the voting outcome there was no such disadvantage:

"24. The Agreement was made on 10 February 2021 when voting for the Agreement concluded with a clear majority of those who voted voting in favour of making the agreement. Of the 1,870 employees who voted in the ballot, 1,087 voted to approve the Agreement – a margin of 304 votes.

25. In that regard, the Commission referred to the decision in *SDA* at paragraph [43] and observed that "[e]ven if all 90 of the affected employees were given an opportunity to vote and did so, voting against the making of the Agreement, it would still have been made."

26. The Full Bench in *Huntsman* made clear that 'likely' in section 188(2)(b) means 'probable' in the sense that there is an odds-on chance of it happening, rather than merely being some possibility of it happening. The word 'disadvantaged' suggests a deprivation which manifests in the employees covered by the agreement being prevented from substantively exercising their rights within the bargaining regime in Part 2-4 of the FW Act.

27. As noted by the Commissioner at [79] of the Decision, even if it is assumed that all 90 employees were eligible to vote and voted against the Agreement, the Agreement would still have been made. Neither those 90 employees nor the rest of the employees covered by the Agreement would be in any different position if the errors had not occurred. That is, the employees covered by the Agreement were not likely to have been disadvantaged by the casual employee errors."¹⁶

[21] In considering the errors it is noted about the Information Provision Error that there is uncertainty in the evidence as to whether the information required to be provided to employees under s.180(2) was actually provided.¹⁷ The evidence is ambiguous; the

¹⁴ Ibid.

¹⁵ Ibid, [23].

¹⁶ Ibid.

¹⁷ [2021] FWC 2964, [90].

information may have been provided to every employee of Northcott whether or not they were eligible to vote, or it might not.

[22] Pertinent to the Voting Request Error it is also the case that the Commission has insufficient information or evidence to determine which of the 90 identified casual employees were eligible to vote. The number might be 90 or 0 or anywhere in between.¹⁸

[23] Section 188(2) enables a finding of genuine agreement if the Commission is satisfied of two matters, referred to in *Huntsman* as cumulative requirements. First the Commission must be satisfied that the agreement would have been genuinely agreed but for minor procedural or technical errors amongst other things in relation to the requirements in ss.188(1)(a) or (b). The first mentioned of those subsections refers to the preapproval steps set out in ss.180(2), (3) and (5) and the requirement to request employees to approve the agreement provided for in s.181(2). Secondly the finding in respect of s.188(2)(a) must be supported by the further finding that the employees covered by the agreement were not likely to have been disadvantaged by the errors.

[24] The first of the errors, the Information Provision Error, is that Northcott might not have provided the required information to all eligible employees. The circumstances by which the error came about (if it did) was the likely imprecision on Northcott's part about which of its casual employees were employed at the time and who would be covered by the agreement. It potentially failed to consider the employees as covered and then may not have provided them with the requisite information. As noted, the evidence on the subject is ambiguous as well as there being none on the subject of the effects of this part of the error.

[25] The Voting Request Error came about for the reasons set out in the First Decision which again may be summarised as an imprecision on Northcott's part as to who was eligible to vote. The error was not that 90 eligible employees were not requested to vote, since that is not the evidence. Instead, the error is that Northcott was imprecise about who was eligible to vote with the consequence of the error being that up to 90 employees were eligible to vote but were not requested to do so.

[26] Determination of whether an error is minor within the meaning of s.188(2) requires an evaluative judgement "having regard to the underlying purpose of the relevant procedural or technical requirement which was not complied with and the relevant circumstances".¹⁹

[27] Despite the seriousness of the matter, it is not the case that a finding may be made that Northcott's imprecise decision making was intentional. While its procedures to ascertain which of its casual employees were eligible to vote were flawed it is not the case those procedures were intentionally directed to not allowing certain people to vote. Rather than this being a situation in which it could be said there was a manipulation of decisions and events in order to remove some employees from voting, Northcott's decisions were directed to establishing a roll of voters who had some cogent claim of being one of the "employees employed at the time who will be covered by the agreement", being the text in both ss.180(2)(a) and 181(1).

¹⁸ Ibid, [76], 5th bullet point.

¹⁹ *Huntsman Chemical Company Australia Pty Limited T/A RMAX Rigid Cellular Plastics & Others*, [2019] FWCFB 318, [74].

[28] The provisions require an employer to form at least three opinions about each person; are they “employed”? Are they employed “at the time”? Will they be covered by the agreement? The nature of the questions involves ascertainment of facts for each person about the past, the present and the future.

[29] Northcott’s preparation and decision-making failed to achieve the goal of identifying which employees had a claim to be an eligible employee by not preparing well enough or early enough for the compilation of the roll. It then did not delve far enough into the circumstances of the employees it proposed to exclude and test whether such was reasonable. The consequence of these matters is that it did not have clear visibility by the time it invited voting participation of who was and was not entitled on its analysis to vote. Its decision-making on those matters may be criticised as incomplete and insufficiently considering of unintended consequences, but not as reckless or with an intention to exclude eligible employees from voting.

[30] The underlying purpose of s.180(2) and (3) and s.181 is summarised in *Huntsman* in the Table 2 extract set out above. Sections 180(2) and (3) are intended to ensure employees may have a reasonable chance to make an informed decision when voting and that they may participate in the voting process if they choose to do so. The purposes of these sections are not absolute – employees may have a chance to make an informed decision and may, but do not have to, participate in the vote. Section 181 ensures employees are given a minimum period of time for the bargaining process to occur before being asked to vote on the agreement. The purpose of each section must also be viewed through the lens of who it is the employer’s obligation is in reference to – namely only those employees “employed at the time who will be covered by the agreement”. Notably, the sections do not include a purpose of ensuring either that everyone who has some claim of being an employee is informed and given a vote, or of ensuring only that each person employed on the first day of the vote has an opportunity to vote.

[31] In *Huntsman* the Full Bench made clear that the description of whether an error is minor would require consideration of all the circumstances:

“7. Generally speaking, the lower the level of non-compliance the more likely it is to be characterised as a ‘minor error’. For example, informing the employees of the matters in ss.180(3)(a) and (b) just after the start of the 7 day access period (say 6 days before the start of the voting process) is likely to be a ‘minor error’ in most cases. But it will depend on the circumstances. If it is the first agreement at the enterprise; the bargaining representatives are inexperienced and the employees are predominantly from a non-English speaking background, then it may not be a ‘minor error’. Conversely, only informing the employees of the time and place at which the vote will occur some 4 days before the voting process starts may be a ‘minor error’ where there is a history of bargaining at the enterprise; the agreement is, in effect, a ‘roll over’ agreement; the employer takes further active steps to remind employees of the time and date of the vote; and a high proportion of employees actually vote.

8. Whether an incidence of non-compliance is characterised as a ‘minor error’ also depends on the nature of the requirement which has not been complied with. For example, the need to inform employees of the time and date of the vote (s.180(3)(a)) is more significant than informing them of the ‘voting method’ (s.180(3)(b)) – the first

requirement may impact on the employees' capacity to participate in the voting process, the second may not.

9. Some species of error are unlikely to be classified as 'minor', for example the deletion of the prescribed text of the NERR which deals with an employee's right to appoint a bargaining representative and the role of the unions as the default bargaining representatives. But, again, it may depend on the circumstances (see paragraphs [77] - [78] above).²⁰

[32] I am satisfied from the circumstances of the matter that Northcott's Information Provision and Voting Request Errors were minor. The non-compliance was unintentional and the product of the combination of high casual workforce, the fact that not all rosters were constant, and less than certain management of the process by which the voting roll was compiled. Northcott's definition of who was eligible to vote was one solution to the imprecision cast by the terminology "employees employed at the time and who will be covered by the agreement" but by no means was that formulation the only possible form. In the end Northcott's critical failure was not to enquire into the circumstances of the 90 casual employees and definitively determine the status of each. This was no mass disenfranchisement but one which led to a possible maximum of 90 employees not being provided with information and invited to vote. Northcott's error in compiling the roll of voters was minor in the context of all the circumstances of the matter. For several reasons that task was always going to be challenging; it has a high casual workforce and it needed to make for each employee the three assessments indicated above. It operates several different rostering systems and does not have central visibility over them. Casual employees can be brought into work at short notice even if they do not appear on a forward roster. Northcott's error had the consequence of not inviting up to 90 eligible employees; on the other hand, it assessed 711 casual employees to be eligible.

[33] The maximum of 90 employees who were not invited to vote is also to be compared not with the 1870 who did vote, but the 2448 who were covered. The vote to approve the agreement was carried with 1078 voting in its favour. The observation may be drawn from these facts that over 500 eligible employees who were invited to vote chose not to.

[34] The errors when made were not likely to have disadvantaged the employees covered by the agreement. Despite the flaws in its decision making Northcott was relatively assiduous in endeavouring to ensure all those it saw as being eligible to vote were invited to do so. It invited casual employees to participate in several tranches²¹ and it may be drawn from the evidence that Northcott did so because it was trying to ensure participation in the vote in accordance with its parameters about eligibility. The ultimate errors arose because Northcott decided the 90 casual employees were not eligible but did not have a sufficiently sound basis to conclusively form that view. In the overall context of voting in a large organisation and a situation in which it cannot be found on the evidence that each of the 90 employees was an eligible voter, but merely that they possibly were, the error was not likely to disadvantage the employees covered by the agreement.

[35] Northcott's decision-making could undoubtedly have been better. However, the decisions it took and the errors it made are not, within the purpose in mind of s.180(2) and (3)

²⁰ [2019] FWCFB 318, [117].

²¹ See First Decision [2021] FWC 2964, from [55].

and s.181, such as to undermine its obligations or to cause large swathes of employees to not have the capacity to consider the proposed agreement and to then vote. In that regard, its errors may be found to be minor as too may be the consequences. Having regard to the voting and coverage numbers I am also satisfied that the employees covered by the agreement which, of course, is the broader number of 2448 identified by Northcott, were not likely to be disadvantaged by either the Information Provision or Voting Request Errors. These errors are therefore of the type contemplated s.188(2) and that a discretion may be exercised by the Commission allowing genuine agreement to be found notwithstanding the errors.

The Inaccurate Explanatory Materials Error

[36] The First Decision found that Northcott had provided inaccurate explanatory materials to employees in certain respects associated with travel expenses. The decision recorded:

- The CPSU's submissions as including:

“c. Attachment 25A of the Respondent's Form 17 declaration, incorrectly states that there was no equivalent provisions relating to Travel (page 18) despite multiple provisions in the CSA in respect of Travel Compensation (Clause 26 of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009), Excess Travel Compensation (Clause 27), Waiting Time (Clause 28), Meal Expenses (Clause 29) and particularly Allowance payable for use of a private vehicle (Clause 36).”

- Northcott's response as including:

“On the matter of travel expenses, Northcott acknowledge that the relevant information to employees does not include reference to clauses 26 – 29 and 36 of the referenced State Award and submit it was an inadvertent omission. However, it submits that the provisions are addressed in another of its information materials ...”

[37] I accept that the error as made was minor, appearing to have been something overlooked in the course of compilation of the explanatory material. It is unlikely that even if an employee perused the materials so forensically as to observe the statement that they would have been misled by it. I find therefore this error is a minor procedural or technical error and that employees covered by the agreement were not likely to have been disadvantaged by it.

CONCLUSION

[38] For the reasons set out above I am satisfied the Agreement is genuinely agreed within the meaning of s 188(2).

[39] As referred to in the First Decision a number of matters of concern on the Commission's part were raised with Northcott in the preliminary consideration stages. In response to those matters Northcott provided submissions and written undertakings. A copy of the undertakings I proposed in the First Decision to accept from Northcott in response to my initial concerns are attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the

undertakings will not result in substantial changes to the Agreement. The undertakings are taken to be a term of the agreement.

[40] Subject to these undertakings 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.

[41] The Health Services Union, the Australian Nursing and Midwifery Federation and the Community and Public Sector Union being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[42] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 12 July 2021. The nominal expiry date of the Agreement is 24 February 2023.



COMMISSIONER

Final Submissions on genuine agreement: for the CPSU 4 June 2021.

Final Submissions on genuine agreement: for the Northcott Society 11 June 2021.

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2021/3943

Application by The Northcott Society

Application for approval of a single enterprise agreement

Undertaking – Section 190

Pursuant to section 190 of the *Fair Work Act* (Cth) (**Act**), The Northcott Society (**Northcott**) provides the following undertakings in respect of the *Northcott Enterprise Agreement 2021 - 2023* (**Agreement**):

1. Notwithstanding clauses 24.1 or 25.1 of the Agreement, the Employer will not roster or require an employee to work more than 10 ordinary hours per shift.
2. Notwithstanding clause 24.1 of the Agreement, the Employer will ensure that ordinary hours of work for employees who are day workers will be worked within the following span of hours:
 - a. for employees classified in Groups 1, 2 and 3 of Schedule A to the Agreement – 6.00am and 8.00pm, Monday to Sunday; and
 - b. for employees classified in Groups 4 and 5 of Schedule A to the Agreement – 6.00am and 6.00pm, Monday to Friday.
3. For employees classified in Groups 1, 2 and 3 of Schedule A to the Agreement and Assistants-in-Nursing, the Employer will supply the employee with an adequate meal where the Employer has adequate cooking and dining facilities or pay the employee a meal allowance of \$13.56 in addition to any overtime payment as follows:
 - a. when required to work more than one hour after the usual finishing hour of work or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour; and
 - b. provided that where such overtime work exceeds four hours a further meal allowance of \$13.56 will be paid.
4. Clause 32.12 is of no effect and will not be relied upon by the Employer.
5. The words "subject to the employer's time off in lieu policy" in clause 26.3.a. are of no effect and will not be relied upon by the Employer.
6. Where, during a fortnightly pay period, an Assistant-in-Nursing works a shift that commences after 12noon and ends between 6.00pm and 7.30pm, Northcott undertakes to ensure that the amount paid to the Assistant-in-Nursing for all ordinary hours worked during the fortnightly pay period is greater than the amount that would otherwise be payable to the Assistant-in-Nursing if such hours were worked under the *Nurses Award 2010*.

These undertakings are provided on the basis of concerns raised by Commissioner Wilson in the application before the Fair Work Commission.

Signed for and on behalf of Northcott

Name: David Long

Position: General Manager People and Culture

Signature

Date: 19 April 2021

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.

NORTHCOTT ENTERPRISE AGREEMENT 2021-2023

PART A

Arrangement and Operative Clauses

PART B

Schedule A – Monetary Rates

- Table 1 – Wage Rates
- Table 2 – Allowances
- Table 3 – Penalties

Schedule B – Rostering Principles

Schedule C – Classification Definitions

Contents

PART A	3
PART 1 – APPLICATION AND OPERATION	3
1. Title	3
2. Incidence	3
3. Duration	3
4. Parties	3
5. Definitions	3
6. Access to this Agreement and the National Employment Standards	4
7. The National Employment Standards and this Agreement	4
8. Agreement Flexibility	4
9. Anti-Discrimination	5
PART 2 – CONSULTATION AND DISPUTE RESOLUTION	6
10. Consultation	6
11. Consultation about changes to rosters or hours of work	8
12. Consultative Committee	8
13. Dispute Resolution Procedure	9
PART 3 - TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT	10
14. Types of Employment	10
15. Training	13
16. Professional development and study leave	13
17. Termination of Employment	13
18. Redundancy	14
PART 4 – MINIMUM WAGES AND RELATED MATTERS	16
19. Pay Rates	16
20. Superannuation	18
21. Trainee Wages	18
22. Allowances for Shift and Weekend Work	19
PART 5 – HOURS OF WORK AND RELATED MATTERS	20
23. Reasonable Hours	20
24. Patterns of Work	20
25. Roster of Hours	21
26. Overtime	23
27. Meals	26
28. Lactation Breaks	27
29. Higher Duties	27

30.	Travel	27
31.	Other allowances - Nurses	28
PART 6 – LEAVE AND PUBLIC HOLIDAYS		28
32.	Annual Leave	Error! Bookmark not defined.
33.	Personal Leave (Sick & Carers)	30
34.	Family and Domestic Violence Leave	31
35.	Long Service Leave	32
36.	Public Holidays	33
37.	Parental Leave	34
38.	Jury Service	37
39.	Community Service Leave	37
40.	NAIDOC Week Leave	38
41.	Ceremonial Leave	38
42.	Special Disaster Leave	38
43.	Pandemic Leave	38
SCHEDULE A – MONETARY RATES Table 1 – Wage Rates		39
Table 2 Allowances		41
SCHEDULE B – Rostering principles		42
	Rostering principles	42
SCHEDULE C – CLASSIFICATION DEFINITIONS		43
Classification definitions		43

PART A

PART 1 – APPLICATION AND OPERATION

1. Title

This agreement shall be referred to as the *Northcott Enterprise Agreement 2021 – 2023*.

2. Incidence

This Agreement replaces *The Northcott Enterprise Agreement 2016-2018*.

3. Duration

This Agreement will have a term of 24 months from the date of filing this Agreement with Fair Work Commission.

4. Parties

This Agreement covers:

4.1 All employees in the classifications set out in Schedule A.

4.2 The Northcott Society A.B.N 87 302 064 152, trading as Northcott, (“the employer”) of 1 Fennell Street, North Parramatta, NSW 2151.

4.3 The Health Services Union, New South Wales Branch A.B.N 93 728 534 595 of Level 2, 109 Pitt Street, Sydney NSW 2000;

4.4 The Community and Public Sector Union, New South Wales Branch A.B.N 11 681 811 732 of 160 Clarence Street, Sydney NSW 2000;

4.5 The Australian Nursing and Midwifery Federation, NSW Branch A.B.N. 85 726 054 782, the New South Wales Branch of the ANMF A.B.N. 41 816 898 298 of 50 O'Dea Avenue Waterloo NSW 2017. The NSWNMA is the commonly recognised reference in NSW.

5. Definitions

“**Administration Services**” means is a group that is employed to provide general and specialist services internally to the employer. This classification is quite broad and may include but is not limited to job functions such as Administration, Finance, Reception, HR, IT and Facility Services.

“**Employer**” means The Northcott Society ACN 000 022 971, trading as Northcott.

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

“**FWC**” means Fair Work Commission.

“**Health Professional**” means an employee appointed as such, to provide social work, or therapy services on behalf of the employer. The employee will possess a qualification which makes them eligible for membership of the relevant professional body such as Australian Association of Social Workers. Responsibilities may include counselling, group work, assessment, advocacy, information provision, speech pathology, occupational therapy, and physiotherapy.

“NES” means National Employment Standards as contained in Part 2-2, Chapter 2 of the Fair Work Act.

“Ordinary Pay” means base rate of pay with no allowances.

“Pay Period” A pay period is a period of 14 days which commences on Thursday and concludes on Wednesday, or such other fortnightly period determined by Northcott following consultation with employees.

“Service” has the same means service as defined in section 22 and 768BL of the Fair Work Act except where otherwise stated.

“Shift Worker” means an employee rostered to work shifts as part of a 24-hour cycle across a seven-day week.

“Trainee” means an employee who is engaged by the employer under an approved traineeship program. This classification shall not include employees who are indentured as apprentices.

“Union” means the union entitled to represent the industrial interests of the employee and which is nominated by an employee to act on the employee's behalf.

6. Access to this Agreement and the National Employment Standards

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

7. The National Employment Standards and this Agreement

The NES and this Agreement contain the minimum conditions of employment for employees covered by this Agreement. Where a condition under the NES provides an entitlement more favourable to the employee in a particular respect than that set out in this Agreement, the more favourable NES entitlement will apply.

8. Agreement Flexibility

8.1 The employer and an employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:

- a. The arrangement deals with 1 or more of the following matters:
 - i. arrangements about when work is performed;
 - ii. overtime rates;
 - iii. penalty rates;
 - iv. allowances;
- 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; and

- b. are not unlawful terms under section 194 of the Fair Work Act; 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. Anti-Discrimination

It is the intention of the parties bound by this Agreement to seek to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, sexual orientation, transgender identity, age, carer status and responsibilities as a carer.

It follows that, in fulfilling their obligations under the dispute resolution procedure prescribed by this Agreement, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the agreement, which by its terms or operation has a direct or indirect discriminatory effect.

Under the *Anti-Discrimination Act 1977* (NSW), it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

Nothing in this clause 9 is to be taken to affect:

- a. any conduct or act which is specifically exempted from anti-discrimination legislation;
- b. offering or providing junior rates of pay to persons under 21 years of age;
- c. any act or practice of a body established to propagate religion which is exempted under

section 56(d) of the Anti-Discrimination Act 1977;

- d. a party to this Agreement from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.

This clause 9 does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

This Agreement shall be read in conjunction with Section 351 – Discrimination of the Fair Work Act.

PART 2 – CONSULTATION AND DISPUTE RESOLUTION

10. Consultation

10.1 This term applies if the employer is seriously considering a major change being:

- a. a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
- b. a change which is likely to lead to job losses; or
- c. proposes to introduce a change to the regular roster or ordinary hours of work of employees.

10.2 Major change

- a. For a major change referred to in paragraph (10.1)(a):
 - i) the employer must notify the relevant employees of the decision to introduce the major change; and
 - ii) subclauses (10.3) to (10.9) apply.

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

10.4 If:

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

10.5 As soon as practicable after making a decision to implement a major change, but before a final decision is made as to the nature of the change, the employer must:

- a. discuss with the relevant employees and their representatives (if any):
 - i. the introduction of the change; and
 - ii. the effect the options for change are likely to have on the employees; and
 - iii. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
- b. for the purposes of the discussion—provide, in writing, to the relevant employees:
 - i. all relevant information about the change including the nature of the change proposed;

and

- ii. information about the expected effects of the change on the employees; and
- iii. any other matters likely to affect the employees.

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

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

10.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in paragraph (10.2)(a) and subclauses (10.3) and (10.5) are taken not to apply.

10.9 In this term, a major change is likely to have a significant effect on employees if it results in:

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

10.10 Change to the regular roster or ordinary hours of work of employees

- a. For a change referred to in paragraph (10.1)(c):
 - i) the employer must notify the relevant employees and their representatives of the proposed change; and
 - ii) subclauses (10.11) to (10.16) apply.

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

10.12 If:

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

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

- a. discuss with the relevant employees and their representatives the introduction of the change; and
- b. for the purposes of the discussion—provide to the relevant employees and their

representatives:

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

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

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

10.16 In this term relevant employees means the employees who may be affected by a change referred to in subclause (10.1).

11. Consultation about changes to rosters or hours of work

11.1 Where the 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, if any, about the proposed change.

11.2 The employer must:

- a. provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the employee's regular roster or ordinary hours of work and when that change is proposed to commence), information about any other matters that the employer reasonably believes are likely to affect the employee;
- b. invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
- c. give consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.

11.3 The requirement to consult under this clause 11 does not apply where an employee has irregular, sporadic or unpredictable working hours.

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

12. Consultative Committee

12.1 The employer will consult employees regularly on significant changes to corporate and operational plans, and on the implementation of this Agreement.

12.2 Consultation will occur directly between managers and their employees, as well as through the

employer's Consultative Committee.

12.3 The Committee will comprise a minimum of five employer nominees and a minimum of eight employee representatives. The Committee will meet as required, and not less than four times per year. A quorum will consist of two management and four employee representatives.

12.4 The employee representatives will be directly elected by employees, in an annual ballot organised by the outgoing committee. The employee representatives will be regarded as being on duty while conducting Committee business and appropriate facility/equipment use and release of duties will be provided.

12.5 A maximum of two (2) workplace delegates from each Union Party identified in clause 4.3, 4.4, 4.5 will be granted up to a maximum of five days per calendar year (1 January to 31 December) paid leave to attend union training, workshops, courses, seminars and/or conferences. Approval will not be unreasonably withheld, provided that.

- a. the scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute/dispute settlement procedure/s;
- b. two weeks' notice is provided to the employer;
- c. the approval of leave must have regard to the operational requirements of the employer;
- d. this leave shall be paid at Ordinary Pay.

12.6 Leave of absence granted pursuant to clause 12.5 shall count as service for all purposes of this Agreement.

13. Dispute Resolution Procedure

13.1 In the event of a dispute in relation to a matter arising:

- a. under this Agreement or the NES; or
- b. any other matters agreed by the employer and employee representatives via the JCC to be included in the scope of this dispute resolution clause;

the following should be adhered to.

13.2 In the first instance, the parties will attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.

13.3 A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute at any stage of this process.

13.4 If a dispute in relation to a matter arising under this Agreement or the NES is unable to be resolved at the workplace and all agreed steps for resolving it have been taken, the dispute may be referred to the FWC for resolution by conciliation and, where the matter in dispute remains unresolved, arbitration.

13.5 While the dispute resolution procedure is being conducted:

- a. work shall continue normally in accordance with the status quo before the dispute unless:
 - i. an employee has a reasonable concern about an imminent risk to his or her health or

safety; or

- ii. the employee is in a disciplinary situation, during which they may be stood down.
- b. a party to the dispute will not change anything which is the subject of dispute or take any action to aggravate a matter in dispute, except to address any obligations under law, including but not limited to the *Work Health and Safety Act 2011* (NSW) and the *National Disability and Insurance Scheme Act 2013* (Cth) and its delegated legislation.
- c. an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

13.6 Any dispute referred to the FWC under this clause 13 should be dealt with by a member agreed by the parties at the time or, in default of agreement, a member nominated by either the Regional Coordinator or the President.

13.7 The parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible.

13.8 If the dispute is arbitrated by the FWC the parties agree to be bound by a decision made by the FWC, subject to any right of appeal that may arise under the Fair Work Act.

PART 3 - TYPES OF EMPLOYMENT AND TERMINATION OF EMPLOYMENT

14. Types of Employment

14.1 Employment categories

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

- a. full-time;
- b. part-time;
- c. casual; or
- d. fixed term

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

14.3 Full-time employment

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

14.4 Part-time employment

- a. A part-time employee is an employee who is permanently engaged to work less than full-time hours of an average of 38 hours per week and has reasonably predictable hours of work.

- b. Before commencing part-time employment, the employer and employee will agree in writing to the guaranteed minimum number of hours to be worked each week and the rostering arrangements which will apply to those hours (“**Contract Hours**”). The terms of the agreement may only be varied by agreement and must be recorded in writing.
 - i. A part time employee (other than an employee classified in the Health Professionals Group 4 in Table 1 – Wage Rates) may agree to work in excess of their Contract Hours at the Ordinary Rate of pay, until the part time employee otherwise qualifies for overtime payments under clause 26.
 - ii. A part-time employee classified in the Health Professionals Group 4 in Table 1 – Wage Rates will be paid at the appropriate overtime rates for any time worked in excess of their Contract Hours as agreed upon in accordance with clause 14.4b.
- c. A part-time employee will be rostered to a minimum of 3 hours for each engagement. This minimum engagement excludes recall to work (clause 26.2b) and attendance at meetings and mandatory training (clause 15).
- d. Unless otherwise stated, the terms of this Agreement will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.
- e. Wherever practicable, the offer of additional hours or shifts will made to part- time employees in the first instance.

14.5 Annual review of part-time hours

- a. At the written request of an employee, the hours worked by the employee will be reviewed annually. Where the employee is regularly working more than their Contract Hours then such Contract Hours shall be adjusted by the employer, to reflect the hours regularly worked. The hours worked in the following circumstances will not be incorporated in the adjustment:
 - i. if the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation;
 - 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.
- b. Any adjusted Contract Hours resulting from a review, should, however, be such as to readily reflect roster cycles and shift configurations utilised at the workplace.

14.6 Casual employment

- a. A casual employee is an employee engaged as such on an hourly basis.
- b. A casual employee will be paid an hourly rate equal to 1/38th of the weekly rate appropriate to the employee’s classification plus a casual loading of 25% paid instead of the paid leave entitlements and provision of public holidays provided to full-time and part-time employees.
- c. Casual employees will be paid a minimum of 3 hours for each engagement.
- d. Cancellation of Shift
 - i. Employer Cancellation

If a shift is cancelled with less than four (4) hours’ notice by the employer, two (2) hours pay will be compensated to the casual employee. In special and exceptional

circumstances, this condition may be varied by mutual arrangement between the casual employee and the employer.

ii. Employee Cancellation

A casual employee must cancel shifts with no less than four (4) hours' notice. If there are circumstances that prevent a casual employee giving 4 hours' notice, for example they suddenly become too ill to attend work, the employee may be required to provide evidence to Northcott supporting this circumstance, for example a medical certificate or statutory declaration.

14.7 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 in writing conversion to permanent employment:
 - i. on a full-time basis where the employee has worked 38 hours per week or an average of 38 hours per week (excluding overtime) throughout the period of casual employment; or
 - ii. on a part-time basis where the employee has worked a regular number of hours each week or fortnight (depending upon the roster) throughout the period of casual employment. Such part-time engagement would be on the basis of the same number of hours as previously worked, unless other arrangements are agreed between the employer and the employee.
- b. The employer may consent to or refuse the request. Consent may only be withheld if the employer has relevant business or operational reasons for doing so but shall not be unreasonably withheld. Arbitration of an employee's request for conversion under clause 13.4 may only occur by agreement of the employer and the employee (or their nominated representative).
- c. The employer may also request a casual employee who has been rostered on a regular and systematic basis over a period of 26 weeks to consider conversion to permanent employment. The employee may consent to or refuse such a request.
- d. Casual conversion will not apply where a casual employee has covered absences of permanent staff that are expected to return to work, for example maternity leave relief.
- e. The employer must provide all casual employees with a copy of the provisions of this subclause 14.7 within the first 12 months of the employee's first engagement to perform work.
- f. When the circumstances outlined in clause 14.7a are applicable and clause 14.7d is not applicable to an employee, the Employer will make reasonable attempts to advise the employee of the provisions of this clause 14.7 and will provide the employee on request with all relevant information to enable him or her to consider the exercise of that right

14.8 Fixed Term Employment

A Fixed Term employee is one appointed as such and is employed for a predetermined fixed term or closed period.

A temporary or fixed term employee may be engaged:

- a. To cover for parental leave;

- b. To complete a project or specified task;
- c. To provide temporary relief for a specified time; or
- d. Due to uncertainty in funding for services.

15. Training

15.1 Employees will be given ongoing training as necessary, relevant to their roles and responsibilities.

15.2 Where practicable, training must be provided to employees during their normal rostered hours of work. Where it is not:

- a. Employees will attend training outside their normal rostered working hours when required to do so by the employer;
- b. The employer must provide employees with two (2) weeks' notice of the requirement to attend training outside of their normal rostered working hours;
- c. Where an employee attends training they will be paid their basic periodic rate of pay and the Vehicle/Travelling Allowance (Schedule A - Table 2) for the travel time that is in excess of the time normally taken for the Employee to attend work;
- d. Training must be arranged so full-time employees receive a minimum break as set out in clause 27. Where practicable, similar arrangements should also be made available to all other employees.

16. Professional development and study leave

16.1 The employer is committed to providing and supporting training and educational opportunities to ensure that employees are able to meet the employer's best practice objectives.

16.2 Further staff development can be achieved through a formal course of study at a recognised institution, or developmental activities such as management or executive programs, conferences and seminars.

16.3 Consistent with the above, employees can make application for study leave for courses related to work and approved by the employer. Such leave is not applicable to casual employees, will not accrue year to year and will be pro-rated for part-time employees.

17. Termination of Employment

17.1 The employer must give written notice of termination of employment. The minimum period of notice is as follows:

- a. one (1) week if the employee is in their 6 month qualifying period;
- b. four (4) weeks if the employee has completed more than six (6) months of Continuous Service to the employer and is 45 years of age or younger;
- c. five (5) weeks if the employee is over 45 years of age and has completed at least five (5) years of Continuous Service with the employer

17.2 An employee must give notice of termination of employment in accordance with the table below of at least the period specified in Column 2 depending upon the period of continuous service in

Column 1:

Column 1 Employee's period of continuous service with the employer at the end of the day the notice is given	Column 2 Period of notice
Not more than 1 year	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

17.3 If an employee is 18 years old or older, and does not give the required period of written notice, the employer may seek to recover up to one week's pay as payment in lieu of notice where the employee has authorised the recovery. Any deduction made must not be unreasonable in the circumstances

17.4 If the employer does not give the required period of written notice, the employee will be entitled to receive payment in lieu of notice.

17.5 Clause 17.1 does not apply where the employer terminates the employee's employment on the ground of serious misconduct.

17.6 Where the employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.

17.7 The time off under clause 17.6 is to be taken at times that are convenient to the employee after consultation with the employer.

17.8 Employees may make application to the Chief Executive Officer or nominee to have the required notice of termination reduced.

18. Redundancy

18.1 Transfer to Lower Paid Duties

Where an employee accepts a transfer to a lower paid position, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to receive if their employment had been terminated.

Alternatively, the employer, at their option, may make a payment to the affected employee(s) that is equal to the difference between the former ordinary rate of pay and the new (lower) ordinary time rate for the number of weeks of notice still owing. This payment would be in lieu of notice requirements.

18.2 Severance Pay

- a. Subject to clause 18.4, in addition to the period of notice determined under clause 17 – Termination of Employment, an employee whose employment is terminated for reasons of redundancy shall be entitled to the following amount of severance pay in respect of Continuous Service with the employer:

Period of Continuous Service:	Under 45 Years of Age	Over 45 Years of Age
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Less than one year	Nil	Nil
1 Year less than 2	4 Weeks	5 Weeks
2 Years less than 3	7 Weeks	8.75 Weeks
3 Years less than 4	10 Weeks	12.5 Weeks
4 Years less than 5	12 Weeks	15 Weeks
5 Years less than 6	14 Weeks	17.5 Weeks
6 Years and over	16 Weeks	20 Weeks

Note: Severance pay payable under this clause 18.2 is payable in satisfaction of any redundancy pay set out in section 119(2) of the Fair Work Act.

- b. For the purpose of this clause 18, the term "week's pay" shall mean:
 - i. Where an employee has more than one current hourly rate under the terms of his/her employment, the ordinary rate of pay shall be deemed to be the average weekly rate earned by the employee during the previous twelve months immediately prior to the termination;
 - ii. Where no normal weekly number of hours is fixed for an employee's work under the terms of his/her employment, the normal number of hours worked shall be deemed to be the average weekly number of hours worked by the employee during the previous twelve months immediately prior to termination;
- c. For the purpose of this clause 18, "Continuous Service" shall be calculated as all service with the employer where there is no more than eight weeks' break between consecutive periods. Approved Leave without pay will not break an employee's Continuous Service with the employer and counts towards the length of the employee's Continuous Service.

18.3 Employee Leaving During Notice Period

- a. An employee whose employment is terminated for reasons of redundancy may terminate employment during the notice period and, if so, will be entitled to the same benefits and payments under this clause 18 as if they had remained with the employer until the expiry of the notice period. However, the employee will not be entitled to be paid for any part of the notice period remaining after the employee ceases employment.

18.4 Interaction with NES redundancy provisions

- a. Sections 119 to 122 of the Fair Work Act apply to employees covered by this Agreement as if a reference to "redundancy pay" in sections 119 to 122 is a reference to "severance pay" payable under this Agreement. In particular:
 - i. section 119 sets out the circumstances in which a redundancy can take place, and severance pay is payable;
 - ii. section 120 sets out the circumstances in which severance pay may be varied because

the employer obtains other acceptable employment for the employee or cannot pay the amount; and

- iii. section 122 affects the obligation to pay severance pay in transfer of employment situations.

18.5 Time Off During Notice Period

- a. During the period of notice of termination given by the employer, the employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- b. If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at interview or he/she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

18.6 Notice to Centrelink

Where a decision has been made to terminate the employment of 15 or more employees, the employer shall notify Centrelink of this, as soon as possible, giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

The employer shall provide to all employees whose employment has been terminated an Employment Separation Certificate in the form required by Centrelink.

PART 4 – MINIMUM WAGES AND RELATED MATTERS

19. Pay Rates

Pay rates for employees covered by this Agreement are set out in Schedule A - Monetary Rates.

19.1 Pay Movements

- a. The minimum wages, penalties and allowances per week are set out in Schedule A – Monetary Rates, Table 1 – Wage Rates, and Table 2 – Allowances.
- b. The following increases shall apply:
 - i. From the first full Pay Period on or after the date that this Agreement is approved by the Fair Work Commission, the relevant rates of pay as set out in Table 1 – Wage Rates will apply.
 - ii. From the first full Pay Period on or after 1 July 2021, the relevant rates of pay as set out in Table 1 – Wage Rates will apply.
- c. In the 2022 calendar year and thereafter, the rates of pay for classifications set out in Table 1 – Wage Rates will continue to be varied to reflect any percentage increase to the corresponding pay rates in the relevant modern awards as determined by the Fair Work Commission in its Annual Wage Case (which usually apply from the first full pay period after 1 July each year).

Special provision for Disability Support Workers

- d. Where immediately before the commencement of this Agreement, an employee:
 - i. held a position with the job title Disability Support Worker;
 - ii. was an employee whose employment was transferred from the Family and Community Services NSW Department in November 2017; and
 - iii. was paid at the pay rate of DSW04 or above,the employee will be paid at a rate of \$30.95 until the rate payable to Group 1, Level 2, pay point 2 exceeds \$30.95. After that, such employees will be paid at the rates set in Group 1, level 2, pay point 2 in Table 1 – Wage Rates as increased from time to time.

19.2 Payment and Particulars of Salary

- a. Wages shall be paid fortnightly. Adjustments of wages may be processed weekly.
- b. Employees shall have their salary paid into nominated accounts within Australia. The employer shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay-day.
- c. Where an employee's position is terminated, any monies due to him/her shall be paid on the last day of their employment or, if limited notice is given, as soon as is practicable after such termination.
- d. On each pay-day, a statement shall be made available to an employee in respect of the payment then due. The written statement (pay advice) will contain: name, amount of ordinary salary, superannuation details and any other information required by law, including as required by section 536 of the Fair Work Act. Employees should contact their supervisor if they have any issues obtaining their pay advice.
- e. Where retrospective adjustments of wages are paid to employees, such payments shall, where practical, be advised on the pay statement as a separate payment to ordinary wages.
- f. Where payment in lieu of notice is made, such payment will be paid on the last day of employment and not at the expiry of the notice period.

19.3 Regrading

- a. Where the nature of the work undertaken by an employee changes, such that the majority of the work regularly performed is work of a type normally associated with a higher classification, the employee may apply to have their position reclassified to the higher classification.
- b. An application for re-grading by an employee must be made in writing.
- c. The employer will respond to the request in writing within a reasonable timeframe, and where possible no more than one month after receiving the written request, indicating whether the application is approved or denied.
- d. Simply performing more work at the same classification or different work at the same classification does not qualify for re-grading.
- e. Factors with a bearing on the decision may include whether the changes:
 - i. are required by the employer;

- ii. involve the exercise of skills, responsibility and/or autonomy normally undertaken at a higher classification; and/or
- iii. are permanent or temporary.

19.4 Labour Flexibility

- a. The employer may direct an employee to carry out such duties as are reasonable and within the limits of the employee's skill, competence and training consistent with employee's classification, grouping and/or career stream provided that such duties are not designed to promote de-skilling.
- b. The employer may direct an employee to carry out such duties and to use such tools and equipment as may be required, provided that the employee has been properly trained or has otherwise acquired the necessary skills in the use of such tools and equipment.
- c. Any direction issued by the employer shall be consistent with the employer's responsibilities to provide a safe and healthy work environment.
- d. Promotion and/or appointment shall be by merit.

20. Superannuation

Superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

For the purposes of this Agreement, the employer's default fund is HESTA.

Employees who commenced prior to 1 January 2005 and whose superannuation is contributed to SAS (State Authorities Super) will be entitled to continue to have funds contributed to SAS.

Employees who, immediately prior to the commencement of this Agreement were covered by a Copied State Award as a result of a transfer of employment from the NSW Department of Family and Community Services in 2017 and whose superannuation is (at the date immediately prior to the commencement of this Agreement) contributed to SAS (State Authorities Super) or SSS (State Superannuation Scheme) will be entitled to continue to have funds contributed to either respectively.

Employees can contribute to any superannuation fund nominated by the employee and approved by the employer in accordance with the Choice of Fund legislation and is a fund that offers a MySuper product in accordance with the Superannuation Legislation from time to time.

21. Trainee Wages

21.1 Employees engaged on an approved traineeship program shall be paid the following percentages of the minimum adult wage appropriate to the job classification in which they are training:

- a. First year of Traineeship - 70%
- b. Second year of Traineeship - 80%
- c. Third year of Traineeship - 90%

21.2 The employer undertakes that no employee employed under an approved traineeship shall be

paid less than the rate prescribed under the National Training Wage clause 19 of the *Social Community, Home Care and Disability Services Industry Award 2010* as varied from time to time.

22. Allowances for Shift and Weekend Work

22.1 Definitions

- a. For employees (other than those classified in Group 5 Nurses in Table 1 – Wage Rates) Afternoon shift means any shift which finishes after 8.00 pm and at or before 12 midnight Monday to Friday.
- b. Night shift means any shift which finishes after 12 midnight or commences before 6.00 am Monday to Friday.
- c. A public holiday shift means any time worked between midnight on the night prior to the public holiday and midnight of the public holiday.
- d. For employees classified in Group 5 Nurses in Table 1 – Wage Rates Afternoon shift means any shift which finishes at or after 7:30 pm and at or before 12 midnight Monday to Friday

22.2 Shift allowances and penalty rates

- a. An employee who works an afternoon shift will be paid a loading of 12.5% of their ordinary rate of pay for the whole of such shift.
- b. An employee who works a night shift will be paid a loading of 15% of their ordinary rate of pay for the whole of such shift.
- c. An employee who works a public holiday shift will be paid a loading of 150% (double time and a half) of their ordinary rate of pay for that part of such shift which is on the public holiday.
- d. The above rates are payable in addition to casual loading. To avoid confusion, a casual employee who works on a weekday shift will be paid at the following rates
 - i. Afternoon shift - 137.5% of the ordinary rate; and
 - ii. Night shift – 140% of the ordinary rate
 - iii. A casual employee working on a public holiday will be paid 275% of the ordinary rate.

22.3 Saturday and Sunday Work

- a. Employees (including full time, part time and casual) whose ordinary working hours include work on a Saturday and/or Sunday will be paid for ordinary hours worked between:
 - i. midnight on Friday and midnight on Saturday at the rate of Ordinary Pay plus 50% (time and a half);
 - ii. midnight on Saturday and midnight on Sunday at the rate of Ordinary Pay plus 100% (double time).
- b. The above rates will be in substitution for and not cumulative upon the shift premiums set out in clause 22.2, and are not applicable to overtime hours worked on a Saturday or a Sunday.
- c. The above rates are payable in addition to casual loading. A casual employee who works on

a weekend will be paid at the following rates:

- i. between midnight Friday and midnight Saturday – 175% of the ordinary rate of pay (inclusive of the casual loading); and
- ii. between midnight Saturday and midnight Sunday – 225% of the ordinary rate of pay (inclusive of the casual loading).

PART 5 – HOURS OF WORK AND RELATED MATTERS

23. Reasonable Hours

23.1 The Employer may require an employee to work reasonable overtime. Payment for overtime is set out in clause 26.

23.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

- a. For the purposes of this clause 23, what is unreasonable or otherwise will be determined having regard to:
 - i. Any risk to employee health and safety.
 - ii. The employee's personal circumstances including any family and carer responsibilities.
 - iii. The needs of the workplace or enterprise.
 - iv. The notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it.
 - v. Any other matter identified in s 62(3) of the Fair Work Act.

24. Patterns of Work

24.1 Ordinary Hours of Work

- a. The ordinary hours of work for employees exclusive of meal times shall not exceed an average of 38 hours per week in each roster cycle. Each roster cycle can be up to 152 hrs per 4 weeks.
- b. Each employee (other than casual employees) shall not be rostered or required to work ordinary hours on at least two full days in each week or four full days in each fortnight. Where practical, these days should be consecutive. Such days off duty shall be mutually agreed between the employee and the employer having regards to the needs of the employer.
- c. There shall be a minimum break of ten (10) hours, or eight (8) hours by mutual agreement between the employer and the individual employee, between ordinary rostered shifts.
- d. Agreement for rostered 8 hour breaks will begin with local consultation between the employee and the direct manager but must be finally approved by either, the Nurse Manager for Nurses classified in Group 5 Nurses in Table 1 – Wage Rates, or the Level 2 manager (or is/her agents) for the employee's relevant area of the business, where practicable. The manager must take into account the individual circumstances of each employee and the needs of the business.

- e. There shall be a minimum break of eight (8) hours between a shift contiguous with a sleepover and another shift.

25. Roster of Hours

25.1 This clause 25 only applies to shift workers.

- a. The ordinary hours of work for each employee shall be displayed on a roster in a place conveniently accessible to employees. Such roster shall be displayed four weeks, but in any case at least one week, prior to the commencing date of the first working period in any roster. It is not obligatory for the employer to display any roster of ordinary hours of work for casual employees.
- b. A roster may be altered at any time to enable the service of the employer to be carried on where another employee is absent from duty on account of illness or in an emergency but where such alteration involves an employee working on a day which would have been his or her rostered day off such time worked shall be paid for at overtime rates.
- c. Extension of rosters beyond 28 calendar days may be introduced subject to such proposals being agreed between the employer and the employee.

25.2 Broken shifts

- a. A broken shift means a shift worked by an employee that includes one or more breaks (other than a meal break) and where the span of hours is not more than 12 hours. Broken shifts can only be worked by mutual agreement between the employer and the individual employee.
- b. Payment for a broken shift will be at Ordinary Pay plus any applicable penalty rates and shift allowances in accordance with clause 22, with shift allowances being determined by the finishing time of each component of the broken shift.
- c. All work performed beyond the maximum span of 12 hours for a broken shift will be paid at Ordinary Pay plus 100% (double time).
- d. An employee must receive a minimum break of 10 hours, or eight (8) hours by agreement, between broken shifts rostered on successive days.
- e. Broken Shifts are not to be worked on either side of a sleepover shift.

25.3 Sleepovers

- a. A sleepover means when the Employer requires an employee to sleep overnight at premises where the client for whom the employee is responsible is located (including respite care) and is not a 24 hour care shift pursuant to clause 25.5 or an excursion pursuant to clause 25.4.
- b. The provisions of clause 25.1 apply for a sleepover. An employee may refuse a sleepover in the circumstances contemplated in clause 25.1b but only with reasonable cause.
- c. The span for a sleepover will be a continuous period of eight hours. Employees will be provided with a separate room with a bed, use of appropriate facilities (including staff facilities where these exist) and free board and lodging for each night when the employee sleeps over.
- d. The employee will be entitled to a sleepover allowance as per the allowance table in this

Agreement.

- e. In the event of the employee on sleepover being required to perform work during the sleepover period, the employee will be paid for any work in excess of one hour in total undertaken during a sleepover, in addition to the sleepover allowance. Where such work exceeds one hour, payment will be made at the prescribed overtime rate for the duration of the work.
- f. The employer may roster an employee to perform work immediately before and/or immediately after the sleepover period, but must roster the employee or pay the employee for at least four hours' work for at least one of these periods of work. The payment prescribed by 25.3d will be in addition to the minimum payment prescribed by this subclause.
- g. An employee will only be required to perform work, if the work is of an urgent nature. This could include, the administration of medication, to assist with transferring a client where there is a WHS risk, there is an emergency, or the provision of personal care.
- h. Northcott undertakes that, in consultation with the Union, if requested, a review of the sleepover practices at a house will be undertaken, and, if it is found that employees are performing duties other than those deemed to be of an urgent nature, an awake shift will be considered by Northcott, and not unreasonably refused.
- i. Clause 25.3 does not apply to employees classified as Nurses classified in Group 5 Nurses in Table 1 – Wage Rates for the purpose of this Agreement

25.4 Excursions

Where the Employee agrees to supervise clients in excursion activities involving overnight stays from their usual place of residence, the following provisions will apply:

- a. Monday to Friday excursions
 - i. Payment at the ordinary rate of pay for time worked between the hours of 8.00 am to 6.00 pm Monday to Friday up to a maximum of 10 hours per day.
 - ii. The employer and employee may agree to accrual of time instead of overtime payment for all other hours.
 - iii. Payment of sleepover allowance in accordance with the provision of clause 25.3.

- b. Weekend excursions

Where an employee involved in overnight excursion activities is required to work on a Saturday and/or Sunday, the days worked in the two week cycle, including that weekend, will not exceed 10 days.

- c. Reimbursement or payment of costs

An employee attending an excursion is entitled to payment or reimbursement of reasonable costs of attending the excursion, including travel, accommodation and meals.

- d. Clause 25.4 does not apply to employees classified as Nurses classified in Group 5 Nurses in Table 1 – Wage Rates for the purpose of this Agreement

25.5 24 hour care

This clause only applies to employees when the employee is required to travel with a client, or care for them in their nominated residence for at least a 24 hour period, to provide support to that client and where clause 25.4 – Excursions is not applicable.

- a. A 24 hour care shift requires an employee to be available to provide one-on-one support to a client who is travelling away from their home for at least a 24 hour period. During this period, the employee is required to provide the client with the support they require. The employee is required to provide a total of no more than eight hours of care during this period.
- b. The employee will normally have the opportunity to sleep during a 24 hour care shift and, where appropriate, a bed in a private room will be provided for the employee.
- c. The employee engaged will be paid eight hours work at 155% of their appropriate rate for each 24 hour period.
- d. In addition, employees will be provided with an allowance identified in Table 2 of Schedule A – Monetary Rates
- e. Clause 25.5 does not apply to employees classified as Nurses classified in Group 5 Nurses in Table 1 – Wage Rates for the purpose of this Agreement

26. Overtime

26.1 The following rates are payable in addition to Ordinary pay to employees who work overtime:

	Part time and Full Time	Casual (inclusive of casual loading)
Monday to Saturday, up to 2 hours overtime	50% (time and a half)	75% (time and three quarters)
Monday to Saturday, after 2 hours overtime	100% (double time)	125% (double time and a quarter)
Sundays	100% (double time)	125% (double time and a quarter)
Public Holidays	150% (double time and a half)	175% (double time and three quarters)

- a. Overtime rates payable under this clause 26 will be in substitution for and not cumulative upon the shift premiums prescribed in clause 22 —Allowance for Shift and Weekend Work; and are not applicable to ordinary hours worked on a Saturday or a Sunday.

26.2 Overtime Payable

- a. Overtime is payable in the following circumstances

Employee type	Circumstances
Full-time employees	All authorised overtime worked in addition to the employee's rostered ordinary hours.
Part time employees (other than an employee classified in the Health Professionals Group 4 in Table 1 – Wage Rates	<p>Anytime worked beyond:</p> <p>a. 76 hours per fortnight;</p> <p>b. 10 hours per day or shift.</p> <p>Time worked up to 10 hours per day or shift shall not be regarded as overtime but an extension of the employee's Contract Hours for that day.</p>
Part time employee classified in the Health Professionals Group 4 in Table 1 – Wage Rates	Anytime worked beyond the employee's Contract Hours as determined under clause 14.4 will be regarded as overtime.
Casual employees	<p>Anytime worked beyond:</p> <p>a. 76 hours per fortnight</p> <p>b. 10 hours per day or shift.</p>
Employees classified in Group 5 Nurses in Table 1 – Wage Rates	<p>RN Level 4 - Not entitled to be paid overtime.</p> <p>All Nurses (except RN Level 4) - If, on the instruction of the employer, a Nurse resumes or continues to work without having had 10 consecutive hours off duty, or 8 hours as agreed, they will be paid at the rate of double time until released from duty for such period (unless the person is working a broken shift in accordance with clause 25.2). This provision is in addition to the provisions in 26.2c.iii.</p>

b. Recall

- i. Employees recalled back to the employer's premises to duty after leaving the employer's premises, shall be paid for a minimum of three (3) hours at the overtime rate for each time he/she is so recalled.
- ii. An employee recalled back to work overtime shall be paid all fares and expenses reasonably incurred in travelling to and from her/his place of work.

c. Rest period after overtime

- i. When overtime work is necessary it shall wherever reasonably practicable be so arranged that employees have at least ten (10) consecutive hours, or eight (8) hours by mutual agreement between the employer and the individual employee, off duty between the work on successive days or shifts.
- ii. An employee who works so much overtime between the termination of his/her ordinary work on any shift and the commencement of his/her ordinary work on the next day or shift that he/she has not had at least ten (10) consecutive hours off duty (or eight (8) hours by mutual agreement) between these times shall be released after completion of such overtime until he/she has had ten (10) consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- iii. If on the instruction of the employer, an employee resumes or continues to work without having had ten (10) consecutive hours off duty, he/she shall be paid an allowance of 100% until he/she is released from duty for such a period that he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

d. Transport home after shift extension

When an employee works additional hours as an extension of shift and ceases work at a time when reasonable means of transport home are not available, he/she shall be paid at Ordinary Pay for the time reasonably spent travelling from the employer's premises to the employee's home with a maximum payment of one hour. This clause 26.2d shall not apply in the case of call-back or where the employee has his/her own vehicle available for conveyance home.

e. On call (other than Nurses)

- i. An employee (except for a Nurse) who is rostered on-call and required to perform work via telephone or any other electronic communication method away from the workplace shall be paid for a minimum of one hours work at ordinary rates if they are required to work for at least 15 minutes cumulatively within a 24 hour period. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's payment. Time worked beyond one hour within the same 24 hour period will be rounded to the nearest 15 minutes. This payment is in addition to any applicable on-call allowance.
- ii. An employee required by the employer to be on call (i.e. available for recall to duty) will be paid an as per Table 2 of schedule A in respect to any 24 hour period, or part thereof.

f. On call (Nurses)

- i. Employees classified in Group 5 Nurses in Table 1 – Wage Rates shall be paid for a minimum of one hour's work at overtime rates if they are required to perform work by the employer via telephone or electronic communication while away from the workplace; whether or not they are on-call. 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. This payment is in addition to any applicable on-call allowance.
- ii. An employee required by the employer to be on call (i.e. available for recall to duty) will

be paid an allowance as per table 2 of schedule A in respect to any 24 hour period, or part thereof.

26.3 Time Off In Lieu (TOIL)

- a. An employee who works approved additional hours outside ordinary hours may be compensated by way of time off in lieu of overtime, subject to the employer's time off in lieu policy.
- b. The agreement to work additional hours and subsequent time off in lieu needs to be agreed between the employer and employee prior to the additional hours being worked.
- c. Time off in lieu of additional hours will accrue on an hour for hour basis.
- d. Time off must be taken:
 - i. within the period of 3 months after the overtime is worked; and
 - ii. at a time or times within that period of 3 months agreed by the employee and employer.
- e. If the employee requests at any time, to be paid for overtime covered by an agreement under clause 26.3 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked, based on the rates of pay applying at the time payment is made.
- f. If time off for overtime that has been worked is not taken within the period of 3 months mentioned in paragraph (d), the employer must pay the employee for the overtime, in the next pay period following those 3 months, at the overtime rate applicable to the overtime when worked, based on the rates of pay applying at the time payment is made

The provisions of this clause 26.3 do not apply to employees classified in Group 5 Nurses in Table 1 – Wage Rates, RN Level 4.

26.4 Nurses

Clause 26.3 applies to employees classified in Group 5 Nurses in Table 1 except the period of time off that an employee classified in Group 5 Nurses in Table 1 is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 26.3 an employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

27. Meals

27.1 Time not exceeding one hour and not less than thirty minutes shall be allowed for each meal period. This time is unpaid. Where an employee is called upon to work for any portion of the meal break, such time shall count as ordinary working time.

27.2 An employee required or recalled to work additional hours following the completion of his or her normal shift for more than two hours shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hours overtime; all such time shall be counted as time worked.

27.3 Where practicable, employees shall not be required to work more than four hours without a tea break or six hours without a meal break.

27.4 A period of twenty minutes is allowed to employees for a tea break and is included in the ordinary hours of work. This time is not transferable or accruable.

27.5 All other meal conditions are contained in service specific meal procedures.

28. Lactation Breaks

28.1 This clause 28 applies to employees who are lactating mothers. A lactation break is provided for breastfeeding, expressing milk or other activity necessary to the act of breastfeeding or expressing milk and is in addition to any other rest period and meal break as provided for in this Agreement.

28.2 A full-time employee or a part-time employee working more than 4 hours per day is entitled to a maximum of two paid lactation breaks of up to 30 minutes each per day.

28.3 A part-time employee working 4 hours or less on any one day is entitled to only one paid lactation break of up to 30 minutes on any day so worked.

28.4 A flexible approach to lactation breaks can be taken by mutual agreement between an employee and their manager provided the total lactation break time entitlement is not exceeded. When giving consideration to any such requests for flexibility, a manager needs to balance the operational requirements of the organisation with the lactating needs of the employee.

29. Higher Duties

29.1 Where an employee classified in Group 5 Nurses in Table 1 – Wage Rates receives a written offer to formally relieve another employee at a higher classification for three (3) or more working days, they will be paid at a rate not less than the minimum rate prescribed for the classification applying to the employee so relieved for the period for which they assumed all such duties.

29.2 Employees classified as Support Worker, Senior Support Worker, or Support Staff Level 1-3 when called upon by the employer to perform all of the duties of a classification paid at a higher scale, shall be paid on that higher scale for the time spent relieving in that position.

29.3 All other employees, including employees classified in Table 1 – Wage Rates Group 4 Clinical Services, Group 1 Supports, Group 2 Administration / Specialists and, Group 3 Senior Staff, who receive a written offer to formally relieve another employee at a higher classification for five (5) or more working days will be paid at a rate not less than the minimum rate prescribed for the classification applying to the employee so relieved for the period for which they assumed all such duties

29.4 This clause 29 is not applicable to employees classified as Nurses classified as Registered Nurse Level 4

30. Travel

30.1 Where an employee is required and authorised by their employer to use their motor vehicle in the course of their duties, the employee is entitled to be reimbursed at the cents per kilometre rate prescribed by the ATO.

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

30.3 Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 30.2 which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

31. Other allowances - Nurses

31.1 Grandparenting of Uniform Allowance

- a. An employee who is:
 - i. classified in Group 5 Nurses in Table 1 – Wage Rates; and
 - ii. as at the date immediately prior to the commencement of this Agreement, receives a Uniform Allowance,will be entitled to be paid a Uniform Allowance as set out in Schedule A of Table 2 – Allowances.

31.2 Registered Nurse in charge allowance

- a. A Registered Nurse who is rostered to be in charge of a unit for the majority of a day, evening or night shift when the Nurse Unit Manager is not rostered for duty (or otherwise in charge of that unit) shall be paid an allowance as set in Schedule A of Table 2 Allowances.

PART 6 – LEAVE AND PUBLIC HOLIDAYS

32. Annual Leave

32.1 All employees, except casual employees, shall be entitled to five weeks (190 hours) paid annual leave.

32.2 Employees engaged in one of the classifications listed in Group 5 of Schedule A (Nurses) will be entitled to an additional week of annual leave, resulting in six weeks (228 hours).

32.3 All employees on paid annual leave are to be paid their Ordinary Pay in addition to any shift allowances and weekend allowances that they would have received had they not been on annual leave during the relevant period.

32.4 Annual leave loading – Shift Workers

For the purposes of this sub-clause 32.4, a Shift Worker is an employee who works for more than four ordinary hours on 10 or more weekends during the yearly period in respect of which their annual leave accrues. A Shift Worker, in addition to their Ordinary Pay, shall be paid while on annual leave the higher of:

- (a) annual leave loading of 17.5% of their Ordinary Pay; or
- (a) shift allowances and weekend allowances that the Shift Worker would have received if the Shift Worker had not been on annual leave.

Shift allowances and weekend allowances shall not be payable for public holidays which occur during a period of annual leave.

32.5 No entitlement – casual employees

Casual employees are not entitled to paid annual leave. The casual loading referred to in

clause 14.6(b) is paid instead of and in satisfaction of the paid leave entitlements of full-time, part-time or fixed-term employees, including annual leave.

32.6 Christmas shut down

- a. Some services of Northcott shut down annually on or around Christmas Day and return on or around New Year's Day. If an employee works in a service that shuts down, they will be expected to hold the relevant amount of annual leave to their credit for the annual shutdown for any days not covered by a public holiday.
- b. Northcott will endeavour to advise employees of the exact dates of the annual shutdown at least 3 months prior to the shutdown, however will ensure that it advises employees by no later than 1 month before the shutdown.
- c. The Christmas shutdown described above will be for no more than 5 days (excluding public holidays) and will occur no more than once a year.
- d. Employees may also use accrued time in lieu during the shutdown.

32.7 Taking Annual Leave

- (a) Employees must submit their application for annual leave at least 4 weeks prior to the commencement of the proposed leave period, or as otherwise agreed and will receive response to their application within 2 weeks
- (b) No employee shall be entitled to take any period of annual leave unless such leave is standing to his/her credit.
- (c) On termination of employment, employees shall be entitled to payment for any untaken annual leave.

32.8 Direction to Take Leave

The employer may direct an employee to take a period of paid annual leave if the employee has accumulated an annual leave credit greater than ten (10) weeks.

- a. The employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- b. If an employer has genuinely tried to reach agreement with an employee under clause 32.8 but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave. The employer shall give to each employee three months' notice where practicable and not less than one month's notice of the date upon which the employee shall commence this period of annual leave.
- c. The direction to take leave is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements are taken into account.
- d. The direction to take leave must not require a person to take any period of annual leave of less than one week
- e. The direction to take leave must not be inconsistent with any leave arrangement agreed by the employer and employee.

32.9 Cashing Out Annual Leave

Employees may request to cash out up to two weeks of their credited annual leave entitlement every 12 months provided:

- (a) The employee has provided a written election to cash out the amount of annual leave, and
- (b) The employer provides written authorisation for the employee to cash out, which:
 - i. States the amount of annual leave specified in the election;
 - ii. States the date on which the payment is to be made; and
 - iii. Is signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian; and
- (c) The employee has at least four weeks' annual leave remaining to their credit.

32.10 The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

32.11 The employer must keep a copy of any written authorisation under this clause as an employee record

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 32.9.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 32.9.

32.12 Other Leave Conditions

For all other annual leave conditions, please refer to the employer's Annual Leave Policy.

33. Personal Leave (Sick & Carers)

33.1 Full-time employees will be entitled to 13 days (98.8 hours) personal leave every 12 months which accrues progressively according to the employee's ordinary hours of work.

33.2 Casual employees are not eligible for paid personal leave.

33.3 Personal leave may be used for any of the following:

- (a) If the employee is unfit for work due to personal illness or personal injury affecting the employee;
- (b) to care for family members or members of the employee's household who require care and support by the employee; or
- (c) any other matters of a personal nature as agreed with the employee's Manager

33.4 The use of personal leave for 33.3(a) or (b) above must be supported by a medical certificate issued by a registered health practitioner or statutory declaration if the leave exceeds either two (2) consecutive working days, five (5) occasions in a year, or is required by the employer.

33.5 An employee must report any absence to their Manager or, if not available, to Human Resources, as soon as practicable.

33.6 An employee with a long -term illness, which will involve continuous leave of four or more weeks, may elect to convert all or part of their personal leave credits to half pay, thereby extending the period of paid leave available to them for that illness. The employer may require a medical certificate as a

condition of approval for personal leave prior to an application for leave being made under this clause.

33.7 A year for the purpose of clause 33.6 commences from the anniversary of the employee's engagement.

33.8 On termination of employment, accrued personal leave will not be paid out.

33.9 Sections 102 to 106 of the Fair Work Act apply to employees covered by this Agreement. In particular, sections 102 and 103 set out the circumstances in which an employee is entitled to take unpaid carer's leave, and sections 104, 105 and 106 set out the circumstances in which an employee is entitled to take compassionate leave.

34. Family and Domestic Violence Leave

34.1 An employee (including a casual) will be entitled to take Family and Domestic Violence Leave in accordance with sections 106A – 106E of the Fair Work Act ("Family and Domestic Violence Leave"). The first five (5) days' of Family and Domestic Violence Leave taken by an employee in each 12 month period will be taken without loss of pay. To avoid doubt, paid leave does not accrue or accumulate year to year and will not be paid out on termination of employment

34.2 Without limiting the entitlements provided in the Fair Work Act 2009, an employee may be entitled to take Family and Domestic Violence Leave if they are experiencing Family and Domestic Violence (as defined in s 106B(2) the Fair Work Act) and:

- (a) the employee needs to do something to deal with the impact of the Family and Domestic Violence; and
- (b) it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

34.3 The employee must give the employer evidence that would satisfy a reasonable person that they are entitled to the leave and the leave is taken for one of the purposes listed in clause 34.2 (or set out in the Fair Work Act, whichever is more generous).

34.4 The employee may choose to take Personal/Carer's Leave at the time of leave being required, and then may request that their leave be categorised as Domestic and Family Violence Leave confidentially directly with payroll. This request must be made as soon as possible to enable the reclassification.

34.5 The employer will take all reasonable precautions to ensure that confidentiality is maintained in this regard

34.6 In the circumstances that:

- a. a person is experiencing domestic violence (as described above);
- b. they have disclosed that fact; and
- c. it is affecting their performance or a contributing factor to misconduct engaged in by them,

the employer will acknowledge the fact that they are experiencing domestic violence as a mitigating factor. Separately, the manager will cooperatively discuss ways of mitigating or overcoming any such effects on work performance.

35. Long Service Leave

35.1 Definitions

For the purposes of this clause, Service shall mean continuous service with the employer as defined in s 4(11) of the *Long Service Leave Act 1955* (NSW) and *Long Service Leave Act 1976* (ACT) (dependent upon the location of work of the employee). The following periods will also count towards an employee's Service:

- a. any period of leave without pay where the employee is absent from work due to illness or injury; or
- b. any period of leave without pay taken by an employee after the employee has completed at least ten years' continuous service.

35.2 Entitlements for specified groups of employees

- a. Employees who were employed as at 1st July, 1999:
 - i. Two months' long service leave on full pay after ten years of Service.
 - ii. After ten years of Service, additional long service leave shall accrue on the basis of two and half months' long service leave on full pay for every five years of Service.
- b. Employees who, immediately prior to the commencement of this Agreement:
 - i. were covered by a Copied State Award as a result of a transfer of employment from the NSW Department of Family and Community Services in 2017; and
 - ii. have more than 10 years' service (as "service" is defined in the relevant Copied State Award),shall accrue on the basis of two and a half months' long service leave on full pay for every five years of Service.
- c. All other Employees:
 - i. Two months' long service leave on full pay after ten years of Service.
 - ii. After ten years of Service, additional long service leave shall accrue on the basis of one month's long service leave on full pay for each five years of Service

35.3 General Entitlements

- a. Each eligible employee shall be permitted to access pro rata long service leave after five years of Service.
- b. An employee may elect to take a period of long service leave at double pay, i.e. an employee may use their entitlement to two months' long service leave by taking one month's leave and receiving two months' pay for this leave.
- c. An employee may elect to take a period of long service leave at half pay, i.e. an employee may use their entitlement to two months' long service leave by taking four months' leave at receiving two months' pay for this leave.

35.4 Applying for Long Service Leave

- a. Long service leave shall be taken at a time mutually arranged between the employer and the employee.
- b. Employees intending to take long service leave shall give a minimum of eight (8) weeks' written notice to the employer advising their intention to take such leave and the date such leave is to commence.

35.5 Termination or Death of Employee

- a. On the termination of employment of an employee, otherwise than by his/her death, an employer shall pay to the employee the monetary value of all long service leave accrued and not taken at the date of such termination and such monetary value shall be determined according to the salary payable to the employee at the date of such termination.
- b. Where the services of an employee with at least five years' Service and less than ten years' Service are terminated by either the employee or employer for any reason other than the employee's serious and wilful misconduct, he/she shall be entitled to be paid a proportionate amount for long service leave on the basis of two months' long service leave for ten years' Service.
- c. Where an employee who has accrued a right to long service leave, or after having had five years' Service and less than ten years' Service dies, the monetary value of the leave shall be transferred to his/her estate.

36. Public Holidays

36.1 All employees (except casuals) shall be entitled to be absent from work on public holidays on full pay.

36.1 Except as otherwise provided in this clause, where an employee is required to and does work on a public holiday, whether for a full shift or not, the employee shall be paid Ordinary Pay plus an allowance of 150% for the hours worked. Such payment is to be in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday.

36.2 For the purpose of this clause, "public holiday" has the same meaning as in section 115 of the Fair Work Act.

36.3 Where shift rosters are such that they incorporate a public holiday as a normal work day, the employer may direct a shift worker not to report for duty on such public holiday. Where this occurs, payment for the public holiday will be at 150%. Such payment is to be in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday.

36.4 Any direction by the employer for non attendance on such day shall be on a rotational basis thus permitting all shift workers, wherever possible, an opportunity of working an equal number of public holidays during any one year.

36.5 Casual Employees

- a. Each casual employee who is required to and does work on a public holiday shall be paid an allowance of 150%. Such worker shall be entitled to be paid in addition the allowance of 25% prescribed in clause 14.4(b) in respect of such work.

37. Parental Leave

37.1 Clause 37 will apply retrospectively from 1 April 2020.

For the purposes of this clause 37 Parental Leave, periods of authorised unpaid leave are counted toward the length of an employee's Continuous Service.

37.2 Paid Parental Leave

a. Eligibility

Full-time and part-time employees are eligible for paid parental leave in accordance with the following provisions:

- i. The employee to take parental leave will be the primary carer for the child during the period of parental leave.
- ii. Either:
 - a. The employee, or the employee's spouse or partner, is going to give birth to a child;
 - b. A child is going to be placed with the employee or the employee's spouse or partner, and the employee is eligible for Unpaid Adoption Leave in accordance with clause 37.3;
 - c. The employee is an intending parent of surrogacy; or
 - d. The employee is a surrogate;
- iii. The employee has completed 1 (one) year of Continuous Service prior to the expected date of birth or placement;
- iv. The period of parental leave commences on or before the birth or placement of the child; and
- v. An employee is required to return to work for a continuous 1 year before being eligible for a second or additional period of paid parental leave.

b. Entitlement

The employee is entitled to fourteen (14) weeks' pay at Ordinary Pay to be paid fortnightly during the period of leave. Upon the employee's election, the Ordinary Pay may be halved and paid for double the length of time (ie, they may be paid half the ordinary week's pay for 28 weeks). The period of paid parental leave will run concurrently with (and form part of) any period of unpaid parental leave.

c. Paid Partner Leave

Eligible employees who have completed at least one (1) year continuous service, whose spouse or partner is pregnant or taking custody of a child, are entitled to a period of four (4) weeks leave at Ordinary Pay. This leave can be taken within 3 months of the birth or day of placement of the child. At the employee's election, the leave can be paid at half the rate for double the length of time. An employee is not entitled to both paid parental and paid partner in respect of the birth or placement of a child.

d. Casual Employees

Under this provision, casual workers are not eligible for paid parental leave.

37.3 Parental Leave – General Provisions

a. Unpaid Eligibility

To be eligible for unpaid parental leave:

- i. an employee other than a casual employee must have completed at least 40 weeks' continuous service prior to the expected date of birth or expected or actual day of placement (in the case of adoption).
 - ii. A casual employee must be a long term casual employee and have a reasonable expectation of continuing employment by the employer on a regular and systematic basis, except for the birth or adoption of a child.
- b. If the leave is adoption-related, the child being adopted must be under 16 years of age at the day of placement, or the expected day of placement of the child; and fulfil the requirements under s 68 (General rule for adoption-related leave--- child must be under 16) of the Fair Work Act.
- c. An employee may commence a period of unpaid parental leave within 12 months after the birth or placement of a child, provided that the employee is a permanent employee who has completed at least 40 weeks' of continuous service at or before the first day of leave or will be a long term casual employee at or before the first day of leave.
- d. Interaction with NES provisions
- i. Sections 72 and 74(5) of the Fair Work Act set out the circumstances in which employees who are part of an Employee Couple (as that term is defined in the Fair Work Act, including spouse or de facto couple whose conditions of employment are both governed by the Fair Work Act) can take unpaid parental leave.
 - ii. Section 71 sets out the period of leave for employees other than members of an employee couple, or where the employee is a member of an employee couple but the other member of the couple does not intend to take unpaid parental leave.
- e. Application for Parental Leave
- i. An employee who intends to proceed on parental leave should formally notify the employer of such intention as early as possible, so that arrangements associated with the absence can be made.
 - ii. Written notice of not less than eight weeks prior to the commencement of the leave should be given, unless the NES provides that a lesser period of notice may be given. This notice must indicate the period of leave desired, and include a medical certificate stating the expected date of birth or (in the case of adoption) the day of placement and that the child will be under 16 as of that day.
 - iii. After commencing parental leave, an employee is entitled to vary the period of leave in accordance with s 75 and s 76 of the Fair Work Act. In particular, if an employee takes less than 12 months of unpaid parental leave, that employee may extend a period of leave once without the consent of the employer to increase the leave to 12 months. If a person seeks to extend their leave by a further 12 month period (coming to 24 months), they are only permitted to do so with the consent of the employer. The employer can only refuse to consent to the extension on reasonable business grounds. A minimum of four weeks' notice must be given although the employer may accept less notice if convenient. The

rights of employee couples to extend a period of unpaid parental leave are governed by s 76(6) of the Fair Work Act.

iv. An employee may reduce a period of unpaid parental leave if the employer agrees.

f. An employee on leave may be entitled to work in order to 'keep in touch' in accordance with s 79A and s 79B of the Fair Work Act without breaking their period of leave.

g. Application for Adoption Leave

Due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that in the reasonably near future they will take custody of a child should formally notify the employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made

h. Staffing Provisions

Any person who occupies the position of an employee on parental leave must be informed of the information required under section 84A of the Fair Work Act, including that the employee taking unpaid parental leave has the right to return to her/his former position. Additionally, since an employee has the right to vary the period of parental leave, offers of temporary employment shall be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment shall also be set down clearly: to a fixed date or until the employee elects to return to duty, whichever occurs first.

i. Effect of Parental Leave on Accrual of Leave and Pay Increments

j. Except in the case of employees who have completed ten years' service, the period of parental leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years' service the period of parental leave without pay shall count as service provided such leave does not exceed six months. Parental leave without pay does not count as service for incremental purposes.

For an employee's right to return to previous position, see section 84 of the Fair Work Act,

37.4 Provisions Applying to Maternity Leave Only:

These should be in read in conjunction with clause 37.2 and 37.3.

Period within 6 weeks before birth

a. The employer may require a pregnant employee to take unpaid parental leave within 6 weeks before birth in circumstances set out in s 73 of the Fair Work Act, including where an employee does not give the employer a certificate requested under s 73(1) within 7 days of the request, or the medical certificate provided states that the employer is not fit for work, or that it is inadvisable for the employee to continue in the present position for a stated period.

b. See section 73(3) for rules around when the period of leave must end for a pregnant employee

c. See section 73(4) for special rules about the period of leave.

d. Illness Associated With Pregnancy

See sections 81 to 82A, of the Fair Work Act for circumstances where the employer will be required to transfer a pregnant employee to 'an appropriate safe job', or pay her No Safe Job

Leave (or in instances where the person is not eligible for unpaid parental leave, allow her to take unpaid no safe job leave). In particular, this will occur where the employee provides evidence that she is fit to continue in her role, but it is inadvisable for her to do so because of illness or risks associated with her pregnancy.

e. Leave for Miscarriage, Stillbirth or Pregnancy related illness

In the event of:

- i. A miscarriage
- ii. Stillbirth (as classified by the Registry of Births, Deaths and Marriages); or
- iii. An employee being not fit for work because the employee has a pregnancy related illness;

an employee may elect to take any other paid leave (including personal leave) under this enterprise agreement or unpaid special maternity leave under s 80 of the Fair Work Act to cover any absence from work.

- f. See section 77A of the Fair Work Act for entitlement and rules relating to where a pregnancy ends (other than by birth of a living child) or child born alive dies
- g. See section 78 of the Fair Work Act for when the employer may give an employee who ceases to have responsibility for care of the child written notice requiring the employee to return to work.
- h. Effect of Premature Birth

An employee who gives birth prematurely, and prior to proceeding on parental leave, shall be treated as being on parental leave from the date leave is commenced to have the child.

37.5 Further Pregnancy while on Parental Leave

Where an employee becomes pregnant while on parental leave, a further period of parental leave may be granted. Should this second period of parental leave commence during the currency of the existing period of parental leave, then any residual leave from the existing entitlement lapses.

37.6 In accordance with s 79 of the Fair Work Act, an employee may elect to take paid leave (except personal leave, community service leave, or compassionate leave) instead of a period of unpaid parental leave. Taking paid leave does not increase the period of unpaid parental leave.

38. Jury Service

38.1 An employee, other than a casual employee, required to attend for jury service during ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wages the employee would have received in respect of the ordinary time that would have been worked had the employee not been on jury service.

38.2 An employee shall notify the employer as soon as possible of the date upon which he/she is required to attend jury service. Further, the employee shall give the employer proof of attendance, the duration of such attendance and the amount received in respect of such jury service.

39. Community Service Leave

39.1 If an employee, other than a casual, takes leave in accordance with the Community Service

Leave provisions provided for under sections 108 and 109 in the Fair Work Act, the first five (5) days' Community Service Leave taken by an employee in each calendar year will be taken without loss of pay. The entitlement to paid Community Service Leave in clause 40.1 is not pro-rated for part-time employees.

Note: The above clause does not affect the rights of any employee (including casual employees) to take Unpaid Community Service Leave in accordance with the Fair Work Act.

40. NAIDOC Week Leave

40.1 Aboriginal and Torres Strait Islander employees shall be granted paid leave for one day per calendar year to enable participation in NAIDOC Week activities. Giving at least 1 weeks' notice, such leave will not be unreasonably refused and can be taken at any time during, in the week immediately preceding, or in the week immediately after NAIDOC Week as celebrated in the employees nominated community.

40.2 This leave is not to be used to represent Northcott at NAIDOC Week activities. Any requirement for an employee to represent Northcott in NAIDOC week activities will be considered normal time worked.

41. Ceremonial Leave

41.1 An employee who is required by indigenous tradition to be absent from work for Aboriginal or Torres Strait Islander ceremonial purposes will be entitled to up to 5 working days unpaid leave in any one year, with the approval of the employer.

42. Special Disaster Leave

42.1 Employees are entitled to Special Disaster Leave when they are absent from duty as a direct result of adverse weather conditions or natural disaster, which prevent attendance or threaten life or property, to initially address their domestic situation.

42.2 An Employee will be paid for one days of Special Disaster Leave per occasion and may apply for any remaining days taken to be paid from the Employee's annual leave or long service leave balance.

43. Pandemic Leave

43.1 If:

- a. an employee is covered by a Modern Award;
- b. that Modern Award provides for or is amended to provide for paid leave or any other benefit directly related to the pandemic caused by the coronavirus COVID-19; and
- c. the leave or other benefit would otherwise be applicable to that employee,

that employee will be entitled to be provided with the leave or benefit under this Agreement.

SCHEDULE A – MONETARY RATES TABLE 1 – WAGE RATES

				On impleme ntation (Min)	On impleme ntation (Max)	8/07/21 Min	8/07/21 Max
Groups	Classification	Level	Position Titles	Per Hour	Per Hour	Per Hour	Per Hour
1	Supports	Level 1	Support Assistant	24.22	27.49	24.71	27.49
		Level 2.1	Support Worker 2.1	26.95		27.49	
		Level 2.2	Support Worker 2.2	28.95		28.95	
			<i>DSW Transition Rate</i>	30.95		30.95	
		Level 3	Support Worker Senior Advisor	31.00	33.20	31.62	33.86
		Level 4	Assistant Coordinator	33.20	35.60	33.86	36.31
		Level 5	Coordinator	35.60	39.63	36.31	40.42
		Level 6	Service Coordinator	39.63	42.43	40.42	43.28
		Level 6M	<i>*after 2 years at Level 6</i>	41.03	42.43	41.85	43.28
2	Administration / Specialists	Level 1	Trainee	24.22	27.49	24.70	28.04
		Level 2	Receptionist, Admin Assistant, Data Entry Officer	27.49	30.21	28.04	30.81
		Level 3	Administration Officer Helpdesk Support Officer	30.21	33.20	30.81	33.86
		Level 3M	<i>*after 2 years at Level 3</i>	31.71	33.20	32.34	33.86
		Level 4	Customer Service Consultant Rostering Coordinator	33.20	35.60	33.86	36.31
		Level 5	Behaviour Support Core Pr. Individual Plan Advisor	35.60	39.63	36.31	40.42
			Customer Liaison Consultant				
			ECEI Coordinator				
			Support Coordinator				
			Specialist Support Coordinator				
		Level 6	Safeguarding Practitioner ECEI Team Leader	39.63	42.43	40.42	43.28
			Behaviour Support - Proficient Pr.				
			Senior Customer Service Consultant				
		Level 6M	<i>*after 2 years at Level 6</i>	41.03	42.43	41.85	43.28
		Level 7		42.43	45.12	43.28	46.02
		Level 8		45.12	49.62	46.02	50.61
3	Senior Staff	Level 1	Senior Safeguarding Practitioner Behaviour Support Advanced Pr.	49.62	54.56	50.61	55.65
			Area Manager				
			Service Manager				

4	Health Professionals	1A	Therapy Assistant	28.28	31.08	28.85	31.70
		1.1	Occupational Therapists, Physiotherapists, Speech Pathologists, Orthotists, Social Workers, Psychologists	33.03		33.69	
		1.2		34.01		34.69	
		1.3		35.02		35.72	
		1.4		36.06		36.78	
		2.1		37.85		38.61	
		2.2		38.97		39.75	
		2.3		40.13		40.93	
		2.4		41.32		42.15	
		3.1	Team Leader, Clinical Lead, Project Lead	44.78		45.68	
		3.2		46.12		47.04	
		3.3		47.50		48.45	
		3.4		48.91		49.89	
5	Nurses	Yr 1	Assistant in Nursing*	23.52		23.99	
		Yr 2		24.27		24.76	
		Yr 3		25.03		25.53	
		Yr 4+		25.81		26.33	
		Yr 5+	Enrolled Nurse with Notation	31.45		32.08	
		Yr 1	Enrolled Nurse	30.42		31.03	
		Yr 2		31.07		31.69	
		Yr 3		31.73		32.36	
		Yr 4		32.39		33.04	
		Yr 5+		33.06		33.72	
		Yr 1	Registered Nurse	32.76		33.42	
		Yr 2		34.56		35.25	
		Yr 3		36.34		37.07	
		Yr 4		38.25		39.02	
		Yr 5		40.14		40.94	
		Yr 6		42.04		42.88	
		Yr 7		44.20		45.08	
		Yr 8+		46.02		46.94	
		RN2	RN2: CNS and CNE	46.51	53.55	47.44	54.62
		RN3	Nurse Unit Manager, NE and CNC	57.73	60.47	58.89	61.68
		RN4	Nurse Manager	60.47	65.99	61.67	67.31
		*The following rates will apply for casual nurses who are classed as Assistant in Nursing (excluding casual loading):					
		Yr 1	Casual Assistant in Nursing*	24.65		25.14	
		Yr 2		25.05		25.55	
		Yr 3		25.50		26.01	
		Yr 4+		26.25		26.78	

Table 2 Allowances

Allowance	Rate
Sleepover and 24 hour	\$85
Sleepover (Christmas Eve, Christmas Day, New Years Eve)	\$100
Travel per kilometre	\$0.80 per km
On Call – Monday to Friday 24 hour period – finish of ordinary duty on Monday to finish of ordinary duty on Friday	\$24.77
On Call – Weekends and public holidays Other 24 hour period including public holidays	\$49.05
RN - In Charge Allowance	\$32.13 per shift
Uniform Allowance for Nurses:	Amount per week Laundry: \$4.84 Shoe: \$1.78 Sock: \$0.57 Hosiery/Stocking: \$3.01

Table 3 Penalties

The following allowances/penalties are to be paid in addition to the ordinary rate:

	Ordinary	Afternoon	Night	Overtime first 2 hours	Overtime after 2 hours
Weekday	0	12.5%	15%	50%	100%
Saturday	50%	50%	50%	50%	100%
Sunday	100%	100%	100%	100%	100%
Public Holiday	150%	150%	150%	150%	150%

* Casual staff are to be paid casual loading in addition to the above penalties

SCHEDULE B – ROSTERING PRINCIPLES

Rostering principles

This Schedule B applies only to preparing a roster which spans 24 hours *and* seven days a week

The following are guiding principles:

- a. In determining rostering arrangements, each person involved in the creation, preparation or review of a roster must have regard to the:
 - i. Customer's requirements and preferences;
 - ii. NDIS requirements;
 - iii. WHS obligations;
 - iv. Management of risk; and
 - v. Clauses in this agreement.
- b. Rosters are not to be used as a mechanism to inappropriately advantage or disadvantage any staff member.
- c. The rostering arrangements are to be determined by the customer needs and the staffs' skills.
- d. All staff should be rostered in a way that facilitates supervision, their attendance at staff meetings and approved professional development and training.
- e. Reference should be had to the Consultation provisions in Northcott's Enterprise Agreement 2021 – 2023 during the development of, or changes to, Master Rosters
- f. Any change in the displayed operational roster must be advised in writing (can be by electronic means) and notified verbally, where practical, to the staff member concerned. In all cases a written record of the decision must be kept.
- g. Wherever practicable, the offer of additional hours or shifts will made to part- time employees in the first instance.

Dispute Resolution

- h. In the first instance concerns about rostering should be the subject of discussion between the staff members involved and their immediate supervisor. Team meetings or supervision sessions may be the appropriate forum for these discussions. In the case that the matter remains unresolved, the matter should be raised with the Service Manager.
- i. Northcott will monitor the application of these principles through the joint consultative committee.

SCHEDULE C – CLASSIFICATION DEFINITIONS

Classification definitions

Group 1 - Supports

Level 1

Characteristics

A person employed on this level may include the initial recruit who may have limited relevant experience.

Positions at this level will involve employees in extensive on-the-job training including familiarisation with the goals and objectives of the workplace.

Employees' duties at this level will be closely monitored with instruction and assistance being readily available.

Following 6 months' service (or if part time or casual, upon the completion of 988 hours) at Level 1 an employee will progress to pay point 2.2 so long as they demonstrate all the characteristics of a Pay point 2.2.

Responsibilities

Undertake routine activities of a clerical and/or support nature;

Undertake straightforward operation of keyboard equipment including data input and word processing at a basic level;

Customer contact and interaction;

Undertaking generic domestic duties under direct or routine supervision and either individually or as part of a team as part of the delivery of disability services

Examples

Support Assistant

Level 2.1

Characteristics:

A person employed on this level may include the initial recruit who may have limited relevant experience.

Positions at this level will involve employees in extensive on-the-job training including familiarisation with the goals and objectives of the workplace.

Employees' duties at this level will be closely monitored with instruction and assistance being readily available.

Responsibilities:

Provide support for the full range of domestic duties including cleaning and meal preparation, under general supervision either individually or as part of a team as part of the delivery of disability services.

Provide support to client's in carrying out personal care tasks under general supervision either individually or as part of a team as part of the delivery of disability services.

Transporting and assisting clients to access the community.

Administer medication, as required.

Examples:

Support Worker 1

Following 6 months' service (or if part time or casual, upon the completion of 988 hours) at Level 2.1 an employee will be classified as a Level 2.2 so long as they demonstrate all the characteristics of a Level 2.2.

Level 2.2**Characteristics:**

A person employed on this level works under direction and undertakes routine activities which require the practicable application of basic skills and techniques.

General features of work in this level consist of performing clearly defined activities with outcomes being readily attainable.

Freedom to act is limited by standards and procedures. However, with experience, employees at this level may have sufficient freedom to exercise judgment in the planning of their own work within those confines.

Employees will be responsible for the time management of their work and required to use basic numeracy, written and verbal communication skills, and where relevant, skills required to assist with personal care and lifestyle support.

Supervision of other staff or volunteers is not a feature of this level. However, an experienced employee may have technical oversight of a minor work activity.

Responsibilities:

Provide support for the full range of domestic duties including cleaning and meal preparation, under general supervision either individually or as part of a team as part of the delivery of disability services.

Provide support to client's in carrying out personal care tasks under general supervision either individually or as part of a team as part of the delivery of disability services.

Transporting and assisting clients to access the community.

Assisting in the development or implementation of resident care plans

Administer medication, as required.

Examples:

Support Worker 2

Level 3

An employee may only be classified at this Level by appointment.

Characteristics:

A person employed at this Level will work under general guidance within clearly defined guidelines and undertake a range of activities requiring the application of acquired skills and knowledge.

Employees contribute specific knowledge and/or specific skills to the work of the organisation.

Employees will be expected to have an understanding of work procedures relevant to their work area and may provide assistance to lower classified employees or volunteers concerning established procedures.

Employees will be responsible for managing time, planning and organising their own work and may be required to oversee and/or guide the work of a limited number of lower classified employees.

Responsibilities:

An employee on this level may perform duties listed in level two, in addition to duties which include substantially, but are not confined to:

- undertake a range of activities related to supporting customers to acquire the necessary vocational and life skills to access further training, education and/or employment requiring the application of established work procedures and may exercise limited initiative and/or judgment within clearly established procedures and/or guidelines;
- assist senior employees with special projects;
- supervising the work of others (including work allocation, rostering and providing guidance) as part of the delivery of disability services. This does not include the formal supervision and management of staff;
- assisting in the development or implementation of resident care plans or the planning, cooking or preparation of the full range of meals under limited supervision either individually or as part of a team as part of the delivery of disability services;
- is required by the employer to support a specific customer (or group of customers) purchasing a complex level of service ("Complex Service").

An employee at this level may be expected to work across multiple locations and/or services. They may be required to provide guidance to a limited number of employees or volunteers not deemed competent in this area.

In the case of Support Connectors, Undertakes a range of activities related to supporting the customer as defined by the service offering and agreement with the customer, program guidelines and procedures.

Examples:

Support Worker 3, Senior Support Worker, Advisor, Life Skills Educator and Complex Worker

Level 4

An employee may only be classified at this Level by appointment.

Characteristics:

Positions at this Level consist of performing functions which are defined by established routines, methods, standards and procedures with limited scope, as defined by their Supervisor.

Assistance will be available. Employees may be responsible for customer liaison or some function of the coordination of service delivery. In addition, employees may be required to assist higher level Coordinators or managers with specific projects.

Employees will be expected to have an understanding of work procedures relevant to their work area and may provide assistance to lower classified employees concerning established procedures to meet the objectives of a minor function.

Employees will be responsible for managing time, planning and organising their own work and may be required to oversee and/or guide the work of a limited number of lower classified employees.

Employees at this Classification could be required to resolve minor work procedural issues in the relevant work area within established constraints

Responsibilities:

In the case of Coordinator 1, an employee may perform duties which include substantially, but are not confined to:

- perform elementary coordination tasks within a community service program requiring knowledge of established work practices and procedures relevant to the work area;
- provide administrative support to higher level Coordinators, exercising sound judgment, initiative, confidentiality and sensitivity in the performance of work;
- assist higher level Coordinators or managers with special projects;

In the case of Employment Consultant 2 an employee may perform duties which include substantially, but are not confined to:

- undertake a range of specialised activities related to supporting customers to acquire the necessary vocational and life skills to access further training, education and/or employment
- build and maintain relationships with external stakeholders
- help support/mentor Employment Consultant 1 staff

Examples:

Coordinator 1

Level 5

Characteristics:

Positions at this Level will allow employees the scope for exercising initiative in the application of established work procedures and may require the employee to establish goals/objectives and outcomes for their own particular work program or project.

At this level, employees may be required to supervise lower classified staff or volunteers in their day-to-day work, including Coordinator 1.

Employees with supervisory responsibilities may undertake some complex operational work and may undertake planning and co-ordination of activities within a clearly defined area of the organisation.

Employees will be responsible for managing and planning their own work and that of subordinate staff or volunteers and may be required to identify and deal with formal disciplinary issues within the work area.

Those with supervisory responsibilities should have a basic knowledge of the principles of human resource management and be able to assist subordinate staff or volunteers with on-the-job training. They may be required to supervise more than one component of the work program of the organisation.

Responsibilities:

An employee on this level may perform duties which include substantially, but are not confined to:

- co-ordinate and exercise responsibility for a service within the organisation
- supervise lower classified employees or volunteers, including Level 4 staff;
- provide assistance to managers;
- provide administrative support requiring a high degree of judgment, initiative, confidentiality and sensitivity in the performance of work;
- manage a facility and/or group based program

Examples:

Coordinator 2

Level 6

An employee may only be classified at this Level by appointment.

Employees on this level have all the characteristics and responsibilities of a Coordinator 1 and Coordinator 2 or an IFS/Trans Key Worker Level 1 and IFS/Trans Key Worker Level 2.

In addition to this a Level 6 position will be responsible for one or more of the following:

- Manage an accommodation site that provides active overnight support
- Supervising Level 4 and Level 5 Support and/or Specialist positions
- Managing an office
- Managing multiple programs in multiple locations

Examples:

Coordinator 3 and Service Coordinator

Group 2 – Administration and Specialist**Level 1****Characteristics:**

A person at this level undertakes duties consistent with the classification descriptors listed in Social and Community Services Employee -- Level 1, Schedule C of the *Social, Community, Home Care and Disability Services Industry Award 2020* (“**SCHADS**”) as amended from time to time.

A person employed as a Level 1 may include the initial recruit who may have limited relevant experience.

Positions at this level will involve employees in extensive on-the-job training including familiarisation with the goals and objectives of the workplace.

Employees' duties at this classification will be closely monitored with instruction and assistance being readily available.

Examples:

Trainee or junior level employee with limited work experience, Person Centred Facilitator 1

Level 2

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 1 as amended from time to time and has 12 months of service or 1976 hours of service as a Level 1. An employee will be classified as a Level 2 so long as they demonstrate all the characteristics of a Level 2.

A Level 2 position Person Centred Facilitator, will be required to have at least 2 years' experience working as a Person Centred Facilitator 1.

- Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples:

Receptionist, Person Centred Facilitator 2, Administration Assistant, and Data Entry Officer

Level 3

An employee may only be classified at this level by appointment.

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 2 as amended from time to time.

Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples

Administration Officer, Helpdesk Support, ICT Support Officer

Level 4

An employee may only be classified at this level by appointment.

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 2 as amended from time to time and is required to perform at a high standard.

Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples

Rostering Coordinator, Customer Service Consultant, Maintenance Officer, Recruitment Officer

Level 5

An employee may only be classified at this level by appointment.

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 3 as amended from time to time

Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples

Support Coordinator, Individual Plan Advisor, ECEI Coordinator, Customer Liaison Consultant, Claiming and Compliance Officer, Contracts and Procurement Officer, Behaviour Support Practitioner - Core Practitioner, Specialist Support Coordinators, Payroll Officer, Finance Officer, Innovation Officer.

Level 6

An employee may only be classified at this level by appointment.

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 4 as amended from time to time.

Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples:

Executive Assistant, Office Manager, Senior Customer Service Consultant, Senior Innovation Officer, Partnerships Coordinator, Safeguarding Practitioner, Behaviour Support Practitioners – Proficient, ECEI Facilitator, ECEI Team Leader

Level 7

An employee may only be classified at this level by appointment

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 4 as amended from time to time and is required to perform at high standard.

Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples

Accountant, Workplace Trainer, Data Analyst, Media Communications Specialist, HRIS Administrator, Senior Payroll Officer

Level 8

An employee may only be classified at this level by appointment.

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 5 as amended from time to time and whose job is to predominantly provide specialist / technical advice or support.

Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples:

Systems Administrator, ECEI Project Officer, ER/IR Consultant, HR Business Partner

Group 3 – Senior Staff/Manager

Level 1

An employee may only be classified at this level by appointment

A person at this level undertakes duties consistent with the classification descriptors listed in SCHADS Social and Community Services Employee Level 5 as amended from time to time and whose job is predominantly to manage staff.

Notwithstanding an employee's qualifications, progression within this band is by performance appraisal, having regard to the acquisition and use of skill and knowledge gained through experience over such a period.

Examples

Area Manager, Service Manager, Senior Safeguarding Practitioner, Behaviour Support Practitioner – Advanced, Behaviour Support Practitioner – Specialist

Group 4 – Health Professional

Clinical Services Classifications

Northcott Clinical Services Salary Matrix

- Northcott has developed a competency based approach to employment classifications as set out in the Northcott Therapy Core Competencies Matrix (the Matrix) (available on the intranet and in the Therapy Manual).
- These reflect the core competencies that Northcott requires from its Clinical Services Professionals to effectively perform the tasks required at each level within the matrix.
- The matrix also provides a method for assessing an employee's progression with Northcott and identifies any gaps that exist between an employee's current skill and competencies and the required skill and competencies for the next level/ levels.

Progression within a Level (eg progression from 1.1 to 1.2, or 2.1 to 2.2, or 3.2 to 3.3).

- To be accepted for a regrade the employee must demonstrate that they are meeting all the requirements of their current level including productivity targets and have also been demonstrating the competencies required of the next level for a minimum period of 6 months. They must also have completed their mandatory and professional development requirements to progress to the next level. Progression may only occur during the annual performance review. An employee must be employed for a period of at least 12 months or 1150 hours (whichever is greater) before they can progress.

Progression to a Higher Level (eg progression from 1.4 to 2.1, or 2.4 to 3.1)

- An employee may progress to Level 2, 3 or 4 using the same process as Progressing within a Level, except with varying periods of time.

Registrations and Professional Membership

- At all levels employees are expected to maintain current registration and/or membership with the relevant professional association as per their specific discipline.

The levels for clinicians within Northcott are defined below and should be read in conjunction with the skills matrix

Therapy Assistants-

Therapy Assistants are required to hold a Certificate III in Allied Health Assistant, or other relevant qualification with or without relevant experience.

Therapy Assistants are employed to assist in the implementation of a therapy program for an individual or a group under the direction and direct supervision of a clinician.

Therapy Assistants may also be required to provide support with administrative tasks around the intake process, customer enquiries, management of customers, equipment, resources, programs and customer data.

Employees employed as a therapy assistant should have the ability to demonstrate sound theoretical knowledge of clinical and technical procedures with guidance.

Level 1 –

Level 1.1

Employees at this level are considered beginning practitioners who hold a relevant degree together with little or no relevant experience.

Employees at Level 1.1 are generally considered a new graduate and or a clinician with less than 12 months clinician experience. They typically work with their practice lead to have their work reviewed at this level and use basic clinical reasoning. They are expected to participate in clinical supervision which may be delivered both through a one on one and or peer supervision framework.

Levels 1.2-1.4

Typically these employees will have more than 12 months experience as a clinician.

At each level the employee will continue to develop their clinical reasoning and how this can be applied in practice

They will also be able to demonstrate their ability to work with limited supervision or with supervision for more complex cases.

At these levels employees participate in the peer supervision framework.

It is expected that employees on level 1 are continuing to build their skills and productivity as per the matrix definitions. As per the matrix these employees should be increasing their billable hours in line with the productivity targets set in the matrix.

As they progress to Levels 1.3-1.4 there is an expectation that they will also participate in supervising students during their university placements.

Typically at level 1.4 employees are able to assess and provide intervention to clients independently. They are also able to develop and implement best practice solutions for more complex issues.

Level 2 –

Levels 2.1-2.2

Employees at this level typically have a minimum of 3 years clinical and professional experience in relevant field. They work independently and are expected to exercise independent judgement on routine matters, however may receive additional support/ advice from more senior staff for complex or critical tasks.

It is expected that they will have a commitment to continuing to develop professionally and may be expected to contribute to educating others in the team or quality improvements to service delivery.

They are familiar with a number of relevant assessment, interventions and outcome measures and service delivery practices.

Levels 2.3-2.4

Employees at these levels expected to be able to work across different service delivery models independently with minimal supervision for complex cases.

They are able to demonstrate a high level of clinical competency and reasoning.

Additional duties at this level may include contributing to the evaluation of guidelines, policy and procedures.

Employees at this level will also be expected to continue to increase their billable hours further as they become increasingly skilled in line with the productivity targets set by the matrix.

Employees at this level may be appointed as Project Leads.

Level 3

Employees at this level typically have a minimum of 5 years clinical experience with extensive knowledge and experience in a specific clinical specialty.

These employees are now considered experienced professionals who are able to independently apply sound knowledge and judgement when performing complex tasks. They will possess high levels of specialist knowledge and will actively contribute to the professional development of other team members. It is expected that these employees will be able to perform a number of specialised tasks within a particular discipline/clinical focus and will be held accountable for service delivery, performance targets within this.

They have advanced independent clinical reasoning skills and the ability to expand on, adapt and

change interventions when required.

They can develop and apply solutions, new ideas and methods to promote continuous improvement.

Employees at this level will have a strong focus on productivity targets. As identified in the matrix, a significant proportion of their time will be spent on meeting their billable hours.

Once employees reach levels 3.3-3.4 they may also be required to also assist in any operational and management duties in conjunction with or in the absence of a Therapy Service Manager.

Employees at this level may be appointed as Team Leader, Clinical Lead or Project Lead.

Group 5 – Nurses

Assistant in Nursing

Assistant in Nursing means an employee, other than one registered with the Nursing and Midwifery Board of Australia / Australian Health Practitioner Regulation Agency or their successor, who is under the direct control and supervision of a Registered or Enrolled nurse and whose employment is solely to assist an RN or EN in the provision of nursing care to persons.

Movement between pay points will be by annual movement to the next pay point, or in the case of a part-time or casual employee 1786 hours of experience, having regard to the acquisition and use of skill described above and knowledge gained through experience in the practice settings over such a period.

Enrolled Nurse with Notation

An employee appointed to the classification of Enrolled Nurse with Notation will have completed the relevant qualifications to be registered, and is registered, as an Enrolled Nurse with the Nursing and Midwifery Board of Australia / Australian Health Practitioner Regulation Agency or their successor and has a notation on their registration of the following effect: "Does not hold Board-approved qualification in administration of medicines".

Enrolled Nurse (Medically Endorsed)

An employee will be appointed to the classification of an Enrolled Nurse if they have completed the relevant qualifications, and is registered as an Enrolled Nurse with the Nursing and Midwifery Board of Australia / Australian Health Practitioner Regulation Agency or their successor. An employee at this classification will be qualified to administer medication and will not have a notation of the following effect, "does not hold Board-approved qualification in administration of medicines", on their registration.

Movement between pay points will be by annual movement to the next pay point, or in the case of a part-time or casual employee 1786 hours of experience, having regard to the acquisition and use of skill described above and knowledge gained through experience in the practice settings over such a period.

Registered Nurse Level 1

Employees classified as Registered Nurse 1 must be registered with the Nursing and Midwifery Board of Australia / Australian Health Practitioner Regulation Agency or their successor as a Registered Nurse.

RN1's are required to perform their duties according to the level of their competency and under the general guidance of, or with general access to a more competent RN who provides work related support and direction, eg a Nursing Unit Manager.

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

- delivering direct and comprehensive nursing care and individual case management to an individual or a group of customers;
- coordinating services or staff of other disciplines, to individual customers
- providing education, counselling and group work services orientated towards the promotion of health status improvement of customers;
- providing support, direction and education to newer or less experienced staff or staff of other disciplines, including Assistants in Nursing, Enrolled Nurses, Support Workers or Service Coordinators;
- providing education to clients/customers and their carers on best nursing/care practices for a specific group of clients/customers;
- accepting accountability for the employee's own standards of nursing care and service delivery; and
- participating in action research and policy development within the practice setting.

Movement between pay points 1 – 8 will be by annual movement to the next pay point, or in the case of a part-time or casual employee 1786 hours of experience, having regard to the acquisition and use of skill described above and knowledge gained through experience in the practice settings over such a period.

Example roles

Registered Nurses, Community Nurses.

Registered Nurse Level 2

An employee may only be classified at this level by appointment.

Employees classified as Registered Nurse 2 must be registered with the Nursing and Midwifery Board of Australia / Australian Health Practitioner Regulation Agency or their successor. In addition, RN2's must hold any other qualification required for working in the employee's particular practice setting.

In addition to the duties of an RN1, an employee at this level and that is classed as a Clinical Nurse Educator may perform the following duties:

- Coordinating, delivering, and implementing, clinical education and assessing clinical competencies of Northcott staff supporting a particular group of customers in the practice setting;
- Implementation of health education programs for a particular group of customers (or their carers) in the practice setting;
- being responsible for planning and coordinating services relating to a particular group of customers in the practice setting;
- acting as a role model in the provision of holistic care to customers in the practice setting; and

- assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting.

In addition to the duties of an RN1, an employee at this level and that is classed as a Clinical Nurse Specialist may perform the following duties:

- delivering an advanced level of care coordination, case management, and expert advice to support people with specific care needs/diseases or their carers
- delivering direct and comprehensive nursing care and individual case management to a specific group of customers in a particular area of nursing practice within the practice setting;
- being responsible for planning and coordinating services relating to a particular group of customers in the practice setting;
- acting as a role model in the provision of holistic care to customers in the practice setting; and
- assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting.

Progression within this band is by performance appraisal, having regard to the acquisition and use of skill described above and knowledge gained through experience in the practice settings over such a period.

Registered Nurse Level 3

Employees classified as Registered Nurse 3 must be registered with the Nursing and Midwifery Board of Australia / Australian Health Practitioner Regulation Agency or their successor. In addition, RN3's must hold any other qualification required for working in the employee's particular practice setting. An employee is to be appointed to this position

Nurse Unit Managers, Clinical Nurse Consultants and Nurse Educators are classified within this level.

An employee at this level and that is classed as a Nurse Unit Manager may perform the duties which include substantially, but are not confined to:

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

On occasion, a Nurse Unit Manager may also deliver direct and comprehensive nursing care to a specific group of customers with complex nursing care needs, in a particular area of nursing practice within a practice setting. They will not be required to deliver direct care on a day to day basis but could be called upon to do so in emergency circumstances or when taking customers to appointments where their main duties allow.

An employee at this level and that is classed as a Clinical Nurse Consultant may perform duties which include substantially, but are not confined to:

- providing expert education on complex clinical issues to customers, their carers and/or other stakeholders;
- providing leadership and role modelling, in collaboration with others, particularly in the areas of action research and quality assurance programs;
- contributing to the development and implementation of clinical processes, policies and procedures to promote the advancement of the speciality clinical practice;
- acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
- delivering direct and comprehensive nursing care to a specific group of customers with complex nursing care needs, in a particular area of nursing practice within a practice setting;
- coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of customers within a practice setting;
- coordinating or managing nursing or multidisciplinary service teams providing nursing and community services; and
- May be required to assist in staff selection, management, development and appraisal;

An employee at this level and that is classed as a Nurse Educator may perform duties which include substantially, but are not confined to:

- providing leadership and role modelling, in collaboration with others;
- being accountable for the development, assessment, planning, implementation and evaluation of nursing education and staff development programs for staff across the organisation or supporting a broad group of customer
- implementation and evaluation of customer's health care education programs;
- accountable for policy and clinical procedure development and implementation; and
- acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care).

Progression within this band is by performance appraisal, having regard to the acquisition and use of skill described above and knowledge gained through experience in the practice settings over such a period.

Registered Nurse Level 4

An employee may only be classified at this level by appointment.

An employee at this level must be registered with the Nursing and Midwifery Board of Australia / Australian Health Practitioner Regulation Agency or their successor. In addition, an employee at this level is appointed by a selection process or by reclassification from a lower level when that the employee is required to perform the duties detailed in this subclause on a continuing basis.

An employee at this level may perform the following duties:

- providing leadership and role modelling;
- customers managing work health and safety;
- acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care);
- being accountable for the management of human and material resources within a specified span of control, including the development and evaluation of staffing methodologies;
- managing financial matters, budget preparation and cost control in respect of nursing within that span of control;
- coordination and promotion of nursing management research projects;
- contributing to the development of nursing and health unit policy, clinical processes and procedures for the purpose of facilitating the provision of quality nursing care;
- managing the activities of, and providing leadership, coordination and support to, a specified group of nurse unit managers or other nurses at the same or similar level;
- being accountable for the effective and efficient management of human, material and educational resources, within a specified span of control;
- being accountable for the development and coordination of nursing management systems within a specified span of control;
- being accountable for the structural elements of quality assurance for a specified span of control;
- being accountable for the development, implementation and evaluation of patterns of customer care for a specified span of control
- being accountable for appropriate clinical standards, through quality assurance programs, for a specified span of control.
- coordination and promotion of nurse education research projects
- being accountable for the standards and effective coordination of education programs for a specified population; and
- undertaking career counselling for nursing staff.

Progression within this band is by performance appraisal, having regard to the acquisition and use of skill described above and knowledge gained through experience in the practice settings over such a period.

Agreement Signatures

EXECUTED by the parties

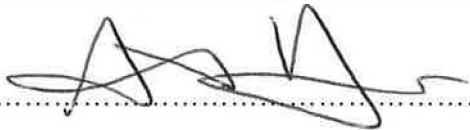
EXECUTED by THE EMPLOYER by signature
of those persons authorised to sign on its behalf:



Elizabeth Forsyth, Chief Executive Officer/Director, 1 Fennell Street, North
Parramatta 2151

Name of Authorised Officer, Position of Authorised Officer, Address of Authorised Officer

DATED 23 / 02 /2021



Alex Varley, Company Secretary, 1 Fennell Street, North Parramatta, 2151
Name, Position, Address

DATED 23 / 2 /2021

Brett Holmes

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

Margaret Potts

WITNESS

Margaret Mary Potts
50 O'Dea Ave, Waterloo

O'Bray Smith

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

Margaret Potts

WITNESS

Margaret Mary Potts
50 O'Dea Ave, Waterloo

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

IN THE FAIR WORK COMMISSION

FWC Matter No.: AG2021/3943

Application by The Northcott Society

Application for approval of a single enterprise agreement

Undertaking – Section 190

Pursuant to section 190 of the *Fair Work Act* (Cth) (**Act**), The Northcott Society (**Northcott**) provides the following undertakings in respect of the *Northcott Enterprise Agreement 2021 - 2023* (**Agreement**):

1. Notwithstanding clauses 24.1 or 25.1 of the Agreement, the Employer will not roster or require an employee to work more than 10 ordinary hours per shift.
2. Notwithstanding clause 24.1 of the Agreement, the Employer will ensure that ordinary hours of work for employees who are day workers will be worked within the following span of hours:
 - a. for employees classified in Groups 1, 2 and 3 of Schedule A to the Agreement – 6.00am and 8.00pm, Monday to Sunday; and
 - b. for employees classified in Groups 4 and 5 of Schedule A to the Agreement – 6.00am and 6.00pm, Monday to Friday.
3. For employees classified in Groups 1, 2 and 3 of Schedule A to the Agreement and Assistants-in-Nursing, the Employer will supply the employee with an adequate meal where the Employer has adequate cooking and dining facilities or pay the employee a meal allowance of \$13.56 in addition to any overtime payment as follows:
 - a. when required to work more than one hour after the usual finishing hour of work or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour; and
 - b. provided that where such overtime work exceeds four hours a further meal allowance of \$13.56 will be paid.
4. Clause 32.12 is of no effect and will not be relied upon by the Employer.
5. The words "subject to the employer's time off in lieu policy" in clause 26.3.a. are of no effect and will not be relied upon by the Employer.
6. Where, during a fortnightly pay period, an Assistant-in-Nursing works a shift that commences after 12noon and ends between 6.00pm and 7.30pm, Northcott undertakes to ensure that the amount paid to the Assistant-in-Nursing for all ordinary hours worked during the fortnightly pay period is greater than the amount that would otherwise be payable to the Assistant-in-Nursing if such hours were worked under the *Nurses Award 2010*.

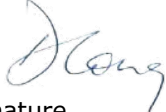
These undertakings are provided on the basis of concerns raised by Commissioner Wilson in the application before the Fair Work Commission.

Signed for and on behalf of Northcott

Name: David Long

Position: General Manager People and Culture

Signature



Date: 19 April 2021