

## SUBJECT FILE NOTE

<b>Subject</b>	South Pacific Private and NSWNMA-ANMF NSW Branch Enterprise Agreement 2018-2020 – Admin Increase		
<b>File No.</b>	EF/11/0225	<b>Officer</b>	Ben MORWITZER
<b>Date</b>	14 July 2021		

### Action / Report

Nurses in South Pacific Private Hospital will receive a 2% increase in wages and allowances on the FFPP 1 July 2021. Confirmation of increase can be found on ED/21/020102. Any queries to be directed to Claire Montgomery.

### Part B Table – Monetary Rates

<b>Classification</b>	<b>Current Weekly Rates</b>	<b>FFPP on or after 1/07/2018 2.0%</b>	<b>FFPP on or after 1/07/2019 2.1%</b>	<b>FFPP on or after 1/07/2020 2.1%</b>	<b>FFPP on or after 1/07/2021 2%</b>
<b>AIN &amp; Trainee EN</b>					
First year of experience	\$803.33	\$819.40	\$836.61	\$854.18	\$871.26
Second year of experience	\$827.11	\$843.65	\$861.37	\$879.46	\$897.05
Third year of experience	\$851.34	\$868.37	\$886.61	\$905.23	\$923.33
Thereafter	\$876.50	\$894.03	\$912.80	\$931.97	\$950.61
<b>Enrolled Nurse - with noration</b>					
First year of experience	\$988.07	\$1,007.83	\$1,028.99	\$1,050.60	\$1,071.61
Second year of experience	\$1,009.74	\$1,029.93	\$1,051.56	\$1,073.64	\$1,095.11
Third year of experience	\$1,031.75	\$1,052.39	\$1,074.49	\$1,097.05	\$1,118.99
Fourth year of experience	\$1,053.65	\$1,074.72	\$1,097.29	\$1,120.33	\$1,142.74
Thereafter	\$1,075.43	\$1,096.94	\$1,119.98	\$1,143.50	\$1,166.37
<b>Enrolled Nurse</b>					
First year of experience	\$1,007.93	\$1,028.09	\$1,049.68	\$1,071.72	\$1,093.15
Second year of experience	\$1,030.07	\$1,050.67	\$1,072.73	\$1,095.26	\$1,117.17
Third year of experience	\$1,052.21	\$1,073.25	\$1,095.79	\$1,118.80	\$1,141.18
Fourth year of experience	\$1,074.58	\$1,096.07	\$1,119.09	\$1,142.59	\$1,165.44

<b>Classification</b>	<b>Current Weekly Rates</b>	<b>FFPP on or after 1/07/2018 2.0%</b>	<b>FFPP on or after 1/07/2019 2.1%</b>	<b>FFPP on or after 1/07/2020 2.1%</b>	<b>FFPP on or after 1/07/2021 2%</b>
Thereafter	\$1,096.97	\$1,118.91	\$1,142.41	\$1,166.40	\$1,189.73
<b>Registered Nurse / Midwife</b>					
First year of experience	\$1,120.43	\$1,142.84	\$1,166.84	\$1,191.34	\$1,215.17
Second year of experience	\$1,181.44	\$1,205.07	\$1,230.38	\$1,256.22	\$1,281.34
Third year of experience	\$1,242.43	\$1,267.28	\$1,293.89	\$1,321.06	\$1,347.48
Fourth year of experience	\$1,307.65	\$1,333.80	\$1,361.81	\$1,390.41	\$1,418.22
Fifth year of service	\$1,372.38	\$1,399.83	\$1,429.23	\$1,459.24	\$1,488.42
Sixth year of service	\$1,437.48	\$1,466.23	\$1,497.02	\$1,528.46	\$1,559.03
Seventh year of service	\$1,511.23	\$1,541.45	\$1,573.82	\$1,606.87	\$1,639.01
Eighth year of service	\$1,573.56	\$1,605.03	\$1,638.74	\$1,673.15	\$1,706.61
<b>Clinical Nurse Specialist</b>					
	\$1,637.57	\$1,670.32	\$1,705.40	\$1,741.21	\$1,776.03
<b>Clinical Nurse Educator</b>					
	\$1,837.75	\$1,874.51	\$1,913.87	\$1,954.06	\$1,993.14
<b>Clinical Nurse Consultant</b>					
	\$2,013.45	\$2,053.72	\$2,096.85	\$2,140.88	\$2,183.70
<b>Nursing/Midwifery Unit Manager -</b>					
Level I	\$1,973.86	\$2,013.34	\$2,055.62	\$2,098.79	\$2,140.77
Level II	\$2,067.47	\$2,108.82	\$2,153.11	\$2,198.33	\$2,242.30
Level III	\$2,122.95	\$2,165.41	\$2,210.88	\$2,257.31	\$2,302.46
<b>Director of Nursing</b>					
	\$2,305.00	\$2,351.10	\$2,400.47	\$2,450.88	\$2,499.90

## Part B Table 2 – Allowances

Item No.	Clause No.	Brief Description	Current Rates	FFPP on or after 1/07/2018	FFPP on or after 1/07/2019	FFPP on or after 1/07/2020	FFPP on or after 1/07/2021
1	12.1(a)	In charge of hospital	\$26.77	\$27.31	\$27.88	\$28.47	\$29.04
2	12.1(b)	In charge of ward/unit in absence of NUM	\$25.04	\$25.54	\$26.08	\$26.63	\$27.16
3	12.1(c)	In charge of ward/unit & hospital	\$37.55	\$38.30	\$39.10	\$39.92	\$40.72
4	12.2(a)	On call	\$22.52	\$22.97	\$23.45	\$23.94	\$24.42
5	12.2(b)	On call on rostered days off	\$47.65	\$48.60	\$49.62	\$50.66	\$51.67
6	12.2(c)	On call during meal break	\$13.57	\$13.84	\$14.13	\$14.43	\$14.72
7	16.3(a)	Uniforms	\$7.11	\$7.25	\$7.40	\$7.56	\$7.71
8	16.3(a)	Shoes	\$2.19	\$2.23	\$2.28	\$2.33	\$2.38
9	16.3(b)	Stockings	\$3.68	\$3.75	\$3.83	\$3.91	\$3.99
10	16.3(c)	Cardigan or jacket	\$2.15	\$2.19	\$2.24	\$2.29	\$2.34
11	16.3(d)	Laundry	\$5.93	\$6.05	\$6.18	\$6.31	\$6.44
12	16.3(f)	Socks	\$0.73	\$0.74	\$0.76	\$0.78	\$0.80
13	18.1	Meal on overtime	\$19.44	\$19.83	\$20.25	\$20.68	\$21.09
15	28.3	Breakfast	\$3.96	\$4.04	\$4.12	\$4.21	\$4.29
15	28.3	Other meals	\$7.20	\$7.34	\$7.49	\$7.65	\$7.80



# DECISION

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

**Woodose Pty Ltd T/A South Pacific Private**  
(AG2018/7291)

## **SOUTH PACIFIC PRIVATE AND NSWNMA-ANMF NSW BRANCH ENTERPRISE AGREEMENT 2018-2020**

Health and welfare services

COMMISSIONER LEE

MELBOURNE, 13 FEBRUARY 2019

*Application for approval of the South Pacific Private and NSWNMA-ANMF NSW Branch Enterprise Agreement 2018-2020.*

[1] An application has been made for approval of an enterprise agreement known as the *South Pacific Private and NSWNMA-ANMF NSW Branch Enterprise Agreement 2018-2020* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Woodose Pty Ltd T/A South Pacific Private. The Agreement is a single enterprise agreement.

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

[3] The Australian Nursing and Midwifery Federation being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[4] I observe that the following provisions is likely to be inconsistent with the National Employment Standards (NES):

- Clause 21.11 – Part-Time and Casual Employees

However, noting clause 42 of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 20 February 2019. The nominal expiry date of the Agreement is 30 June 2020.



COMMISSIONER

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**SOUTH PACIFIC PRIVATE**

**AND**

**NSWNMA-ANMF NSW BRANCH**

**ENTERPRISE AGREEMENT**

**2018-2020**

## PART A

### 1. Arrangement

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## 2. Title

This agreement will be known as and referred to as the *South Pacific Private and NSWNMA-ANMF NSW Branch Enterprise Agreement 2018-2020* ('the Agreement').

## 3. Parties

This agreement will be binding on:

- 3.1 Woodose Pty Ltd T/A South Pacific Private (A.C.N 003 340 912) (the employer) of 24 Beach Street, Curl Curl NSW 2096;
- 3.2 The Australian Nursing & Midwifery Federation NSW Branch (ANMF) A.B.N 63 398 164 405 ('the Union') of 50 O'Dea Avenue Waterloo, Sydney, New South Wales, 2017; and
- 3.3 Nursing employees employed in classifications listed in Table 1 – Salaries of Part B, Monetary Rates.

## 4. Duration

This agreement will commence operation seven days after it is approved by the Fair Work Commission and shall have a nominal expiry date of 30 June 2020.

## 5. Definitions

Unless the context otherwise indicates or requires the several expressions hereunder defined shall have the respective meanings assigned to them:

**"Act"** shall mean the Fair Work Act.

**"Assistant in Nursing"** means a person, other than a registered nurse, or enrolled nurse, who is employed in nursing/midwifery duties in a hospital.

**"Assistant Director of Nursing"** means:

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

**"Average Occupied Beds"** means calculating the adjusted daily average of occupied beds of a hospital, each newly born baby shall count as one half patient and 700 outpatients per annum shall count as one occupied bed. The average shall be taken for the twelve months ended on the 30 June in each and every year and such average shall relate to the salary of the succeeding year.

**"Award"** means the Nurses Award 2010 as amended from time to time.

**"Board"** means the Nursing and Midwifery Board of Australia and shall also be taken to mean the Australian Health Practitioner Regulation Agency (AHPRA) where appropriate

**"Clinical Nurse Consultant"** means a registered nurse appointed as such to the position of, whose had at least five years post-basic registration experience and who has in addition approved post-basic nursing qualifications relevant to the field in which they are appointed or such other qualifications or experience deemed appropriate by the employer.

**"Clinical Nurse Educator"** means a registered nurse with relevant post registration certificate qualifications or experience deemed appropriate by the employer, who is required to implement and



evaluate educational programmes at the ward/unit level. The Clinical Nurse Educator shall cater for the delivery of clinical nurse education in the ward/unit level only.

A nurse will achieve Clinical Nurse Educator status on a personal basis by being required by the Hospital to provide the educational programmes detailed above.

Nothing in this clause shall affect the role carried out by the Clinical Nurse Specialist as a specialist resource and the Clinical Nurse Consultant in the primary role of clinical consulting, researching etc.

**"Clinical Nurse Specialist"** means a registered nurse with relevant post-basic qualifications and 12 months' experience working in the clinical area of his/her specified post-basic qualification, or a minimum of four years' post-basic registration experience, including three years' experience in the relevant specialist field and who satisfies the local criteria.

**"Day Worker"** means a worker who works their ordinary hours between 6.00 am and 6.00 pm Monday to Friday

**"Deputy Director of Nursing"** means a person appointed to that position or deemed to hold that position pursuant to Clause 30, Deputy Directors of Nursing and Assistant Directors of Nursing.

**"Director of Nursing"** includes a registered nurse who is registered by their employer with the Health Administration Corporation of New South Wales as the person in charge of the hospital. There shall be only one person in each hospital entitled to be classified as Director of Nursing or whatever title the Senior Nursing Administrator is known at the hospital.

**"Enrolled Nurse"** means a nurse registered with the Board and is endorsed to administer medications. An Enrolled Nurse may be required to lead and/or supervise the work of others.

**"Enrolled Nurse (with notation)"** means a nurse registered with the Board who has the following notation: "Does not hold Board-approved qualifications in administration of medications" attached to their registration.

**"Experience"** in relation to an enrolled nurse, or assistant in nursing/ midwifery means experience before and/or after the commencement of this Agreement whether within New South Wales or elsewhere and in the case of an enrolled nurse or assistant in nursing/midwifery who was formerly a student nurse includes experience as such student nurse.

For the purpose of determining the year of experience for part time or casual employment, a year of experience shall be 1786 hours of employment.

**"FWC"** means the Fair Work Commission

**"Hospital"** means a private hospital as defined by the *Private Health Facilities Act 2007*.

**"Immediate Family"** means:

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

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

**"Industry of Nursing"** means the industry of persons engaged and employed in New South Wales in the profession or occupation of nursing and employed in or in connection with private hospitals.

**"NES"** means the National Employment Standards, as varied from time to time.

**"Nurse Educator"** means a registered nurse with a post registration certificate, who has relevant experience or other qualifications, deemed appropriate by the employer who is appointed to a position of Nurse Educator.

A Nurse Educator shall be responsible for the development, implementation and delivery of nursing education programmes within a hospital or group of hospitals. Nurse education programmes shall mean courses conducted such as post registration certificates, continuing nurse education, new graduate orientation, post registration enrolled nurses courses and where applicable general staff development courses.

A person appointed to a position of Nurse Educator who holds relevant tertiary qualification in education or tertiary postgraduate specialist clinical nursing qualifications shall commence on the 3rd year rate of the salary scale.

A person appointed as the sole nurse educator for the hospital shall be paid at the 3rd year rate of the salary scale.

Incremental progression for Nurse Educators' shall be on completion of 12 months' satisfactory service subject that progression shall not be beyond the 3rd year rate unless the person possesses the qualifications detailed in the two previous paragraphs. Persons appointed to the 3rd year rate by virtue of paragraphs 3 and 4 above shall progress to the 4th year rate after completion of 12 months' satisfactory full time service.

**"Nursing Unit Manager"** means a registered nurse in charge of a ward or unit or group of wards or units in a hospital shall include:

- (a) **"Nursing Unit Manager Level 1"** whose responsibilities include:
- (1) Co-ordination of Patient Services
    - Liaison with all health care disciplines for the provision of services to meet patient needs.
    - The orchestration of services to meet patient needs after discharge.
    - Monitoring catering and transport services.
  - (2) Unit Management
    - Implementation of hospital policy.
    - Dissemination of information to all personnel.
    - Ensuring environmental safety.
    - Monitoring the use and maintenance of equipment.
    - Monitoring the supply and use of stock and supplies.
    - Monitoring cleaning services.
  - (3) Nursing Staff Management
    - Direction, co-ordination and supervision of nursing activities.
    - Training, appraisal and counselling of nursing staff.
    - Rostering and/or allocation of nursing staff.
    - Development and/or implementation of new nursing practice according to patient need.
- (b) **"Nursing Unit Manager Level 2"** whose responsibilities in relation to patient services, ward or unit management and staff management are in excess of those of a Nursing Unit Manager Level 1.
- (c) **"Nursing Unit Manager Level 3"** whose responsibilities in relation to patient services ward or unit management and staff are in excess of those of a Nursing Unit Manager Level 2.

**"Ordinary pay"** of an employee includes in addition to the base rate of pay and any applicable over-agreement payments for ordinary hours of work. It does not include shift or weekend penalties.

**“Registered Nurse”** means a person registered by the Board as a Registered Nurse.

**"Senior Nurse Educator"** means a registered nurse with a post registration certificate or appropriate qualifications, who has, or is working towards recognised tertiary qualifications in education or equivalent and has demonstrated experience and skills in the field of education appointed to a position of Senior Nurse Educator.

A Senior Nurse Educator shall be responsible for one or more Nurse Educators in the planning, co-ordination, delivery, and evaluation of educational programmes such as post registration certificate courses, continuing nurse education, new graduate orientation, post registration enrolled nurses courses and where applicable general staff development courses either on a hospital or group of hospitals basis.

Incremental progression shall be on completion of 12 months' satisfactory service.

**"Service"** for the purpose of Clause 11, Recognition of Service and Experience, means service before or after the commencement of this Agreement in New South Wales or elsewhere as a registered nurse, provided that all service recognised prior to the commencement of this Agreement shall continue to be recognised.

To the foregoing shall be added any actual periods on and from January 1971 during which a registered nurse undertook a post-basic course whilst an employee of and rendering service in an institution or hospital and such course is recognised by the Board or acceptable to the Health Administration Corporation of New South Wales, or is one of the following certificate or diploma courses:

- Associate Diploma in Community Health – Australian College of Nursing, Australia
- Associate Diploma in Nursing Administration – Australian College of Nursing, Australia
- Associate Diploma in Nursing Education - College of Nursing, Australia; Australian College of Nursing; Newcastle College of Advanced Education.
- Certificate in Ward Management – Australian College of Nursing.

Provided that no more than three such courses shall count as service.

A reference to the Australian College of Nursing in this Agreement shall be deemed to be a reference also to the School of Nursing Studies, Cumberland College of Health Sciences.

For the purpose of determining the year of service for part time or casual employment a year of service shall be 1786 hours of employment. Only paid leave shall be counted as service.

**"Shift Worker"** means a worker who is not a day worker as defined.

**"Union"** means the Australian Nursing & Midwifery Federation (ANMF), of which New South Wales is a Branch (ANMF NSW Branch). The NSWNMA is the commonly recognised reference in NSW.

**"Workplace Representative"** Workplace Representative means a person(s) nominated by an employee or employees to represent them in accordance with the provisions of this Agreement. A Workplace Representative may include the Union.

## **6. Hours of Work and Free Time of Employees Other than Directors of Nursing**

- 6.1 The ordinary hours of work for a full time employee, other than Directors of Nursing, exclusive of meal times, shall be 38 hours per week, 76 hours per fortnight or 152 hours per 28 calendar days.
- 6.2
- (a) The hours of work prescribed in subclause 6.1 shall, where possible, be arranged in such a manner, that in each roster cycle of 28 calendar days each employee shall not work their ordinary hours or work on more than nineteen days in the cycle.
  - (b) Notwithstanding the provision of subclause 6.2(a), employees may, with the agreement of the employer work shifts of less than 8 hours each over 20 days in each cycle of 28 days.
  - (c) Provided that on the occasion of an employee's written request, and with the consent of the employer, a 9.5 day fortnight may be worked instead of the 19-day month or

- (d) the 38 hours per week, may be arranged in order that an employee shall not be required to work his/her ordinary hours in more than five days in one week or 10 days in one fortnight.
  - (e) A 12 hour shift system may be introduced in accordance with clause 6.16.
- 6.3 The shift length for ordinary hours of work per day, exclusive of meal breaks, will be a maximum of 10 hours on a day shift or 11 hours on a night shift.
- 6.4 Additional Day Off (ADO)
 

An ADO system of work, for full-time employees, will operate as follows:

  - (a) The employer is to decide when employees take their ADO's. Where necessary the employer must consult with the affected employees to ascertain the employees' preferences and must take any such preferences into account when arriving at a decision;
  - (b) Where practicable, ADO's shall be consecutive with RDO's;
  - (c) Once set, the ADO's may not be changed except in accordance with the provisions of Clause 9 Rosters;
  - (d) Where the employer has decided that ADOs can be accumulated, ADOs may be accumulated up to a maximum of six in any one year. By mutual agreement this may be extended to no more than 12 days at any one time. Where the employee wants to accumulate more than 6 ADO's the employee must apply and the employer will not unreasonably decline the request. Where ADO's are accumulated they may be taken in conjunction with the employee's annual leave, or as otherwise agreed;
  - (e) An employee will be paid for any accumulated ADOs, at ordinary rates, on the termination of their employment for any reason.
- 6.5 Rostered Days Off (RDO)
  - (a) Each employee must be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28-day cycle.
  - (b) No duties shall be performed by the employee on these RDO's except for overtime.
  - (c) Where practicable, RDO's shall be consecutive and shall not be preceded by an evening shift or a night shift unless an additional eight hours are granted as sleeping time.
  - (d) For the purpose of this subclause "full day" means from midnight to midnight or midday to midday.
- 6.6 An employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift.
- 6.7 An employee shall not work more than 7 consecutive shifts unless the employee so requests and the Director of Nursing agrees.
- 6.8 An employee shall not work more than two (2) quick shifts in any period of 7 days. A quick shift is an evening shift which is followed by a morning shift.
- 6.9 The hours of work will be continuous, except for meal breaks. Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.
- 6.10 Meal Breaks
 

An employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes.
- 6.11 Tea Breaks
  - (a) Two separate ten-minute intervals (in addition to meal breaks) shall be allowed each employee on duty during each ordinary shift of 8 or 10 hours as the case may be.

- (b) Subject to agreement between the employer and the employee, such intervals may alternatively be taken as one twenty-minute interval, or by one 10-minute interval with the employee allowed to proceed off duty 10 minutes before the completion of the normal shift finishing time. Such interval(s) shall count as working time.
- 6.12 Subclauses 6.10 and 6.11 of this clause shall not apply to an employee who, before going on night duty, is provided with a meal between 9.00 pm and 11.00 pm and who is allowed two intervals of twenty minutes each during the period of night duty but such intervals shall count as working time and shall be paid for as such.
- 6.13
  - (a) Except as provided for in subclause 6.13(b) an employee shall not be employed on night duty for a longer period than 8 consecutive weeks. After having served a period of night duty an employee shall not be required to serve a further period on night duty until they have been off night duty for a period equivalent to the previous period on night duty.
  - (b) The provisions of subclause 6.13(a) shall not apply to an Assistant Director of Nursing, a Nursing Unit Manager or a general nurse in charge, as the case may be, who is employed permanently in charge at night nor to an employee who requests to be employed on night duty and the Director of Nursing consents.
- 6.14 An employee changing from night duty to day duty or from day duty to night duty shall be free from duty during the twenty hours immediately preceding the commencement of the changed day.
- 6.15 On Call
  - (a) Employees may be required to remain on call. Any such time on call shall not be counted as time worked (except insofar as an employee may take up actual duty in response to a call), but shall be paid for in accordance with Clause 12, Special Allowances. Provided, however, no employee shall be required to remain on call whilst on leave or on the day before entering upon leave.
  - (b) No employee shall be required to remain on call whilst on a rostered day off or on completion of the shift on the day preceding a rostered day off. This provision shall not apply where in special circumstances it is necessary for an employer to place staff on call on rostered days off or on completion of the shift on the day preceding a rostered day off in order to ensure the provision of services.
- 6.16 The following criteria shall apply to the introduction of 12 hour shifts:
  - (a) 12 hour shifts will only be introduced in units where there has been full consultation with the staff affected and a majority of the staff affected agree to the introduction of the proposed 12 hour shift system;
  - (b) any employee who does not wish to work under the 12 hour shift system may work a mutually agreed alternative shift system in the unit affected or may transfer to another mutually agreed position within the facility with no loss of classification and contracted hours;
  - (c) the span of hours must not exceed 12.5 hours;
  - (d) there must be a maximum of three consecutive night shifts which include one or more 12 hour shifts;
  - (e) there must be a minimum break of 11.5 hours rostered between each 12 hour shift;
  - (f) employees must be allowed either two 30 minutes or one 60 minutes meal break. In addition to the meal breaks employees must be allowed either two 10 minute or one 20 minute paid tea break;
  - (g) the employer must notify the employees, and if requested by the employee any nominated employee representative, which may be a union representative, of the implementation of the 12 hour shifts at least one month prior to commencing the new arrangements. The details of that notification must indicate the number of staff involved, the section of the hospital involved, and the Agreement provisions which need to be overridden;

- (h) there must be an evaluation process at the completion of the first 12 months, or sooner if the employer and affected employees agree. The evaluation process must involve representatives of employees and the employer. Aspects which are to be considered in the evaluation process are to include occupational health and safety data, personal leave patterns and the frequency of overtime;
- (i) the employees and if requested by the employee any nominated employee representative which may be a union representative are to be notified of the outcome of the evaluation process; and
- (j) nothing contained in this subclause shall prevent an individual employee and their employer reaching mutual agreement to that individual working 12 hour shifts.

#### 6.17 Reasonable Additional Hours

- (a) All hours worked over an average of 38 ordinary hours per week, will be deemed to be additional hours. All hours worked by part-time employees beyond their guaranteed minimum number of hours will be treated as additional hours for the purpose of this subclause. From time to time, full time employees may be required to work a reasonable amount of additional hours. Part time employees may be asked, but not required, to work a reasonable number of additional hours. All additional hours worked will be paid in accordance with this Agreement.
- (b) An employee may not be required to work additional hours in circumstances where the working of additional hours would result in the employee working hours which are unreasonable having regards to (refer to section 62 of the Act):
  - (i) any risk to employee health and safety from working the additional hours;
  - (ii) the employee's personal circumstances, including family responsibilities;
  - (iii) the needs of the workplace or enterprise in which the employee is employed;
  - (iv) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;
  - (v) any notice given by the employer of any request or requirement to work the additional hours;
  - (vi) any notice given by the employee of his or her intention to refuse to work the additional hours;
  - (vii) the usual patterns of work in the health industry, or the part of the industry, in which the employee works;
  - (viii) the nature of the employee's role, and the employee's level of responsibility;
  - (ix) whether the additional hours are in accordance with averaging terms included in Clause 6 of the Agreement;
  - (x) any other relevant matter.

### 7. Hours of Work and Free Time of Directors of Nursing

This clause does not apply to part-time employees.

- 7.1 A Director of Nursing shall be free from duty for not less than 9 days in each 28 consecutive days and such days free from duty may be taken in one or more periods.
- 7.2 If any of the days mentioned in subclause 7.1 of this clause cannot be taken by reason of emergency, such day or days shall be given and taken within 28 days of becoming due.
- 7.3 A Director of Nursing shall, where practicable, inform his or her employer giving not less than seven days' notice of the days he or she proposes to be free from duty; provided that such days shall be subject to the approval of the employer, and such approval shall not be unreasonably withheld.

## **8. Banking of Hours**

- 8.1 A full time or part time employee may, by agreement made daily, weekly or fortnightly with their Nurse Unit Manager or DON:
- (a) work less than their daily, weekly or fortnightly rostered or contracted hours and work those hours at a later date; or
  - (b) work more than their daily, weekly or fortnightly rostered or contracted hours and take time off in lieu of payment, or may set off the additional hours worked against any owing under (a) above.
- 8.2 An employee who works less than their rostered or contracted hours shall be paid as if those hours had been worked during the relevant period, including payment for any weekend or shift penalties that would otherwise have been due for the time not worked.
- 8.3 An employee who works more than their rostered or contracted hours shall not receive payment for any weekend or shift penalties that would otherwise have been due for that extra time worked.
- 8.4 Time debited or credited under these arrangements shall all be at ordinary time, i.e. an hour for an hour.
- 8.5 An employee may not have more than 76 hours in debit or credit at any point in time.
- 8.6 Employees who have hours in debit must be given first option to work additional hours prior to the use of casual employees.
- 8.7 The hospital must keep detailed records of all hours credited and debited to employees under these arrangements. Employees must have full access to these records.
- 8.8 On termination of employment the employer must pay the employee for all hours in credit.
- 8.9 Either party shall have the right to terminate an agreement under this clause with two weeks' notice.

## **9. Rosters**

- 9.1 The ordinary hours of work for each employee, other than the Director of Nursing and casual employees, shall be displayed on a roster in a place conveniently accessible to employees.
- 9.2 The roster shall be displayed where practicable at least two weeks prior, but in any event not less than one week prior, to the commencing date of the first working period in the roster. Provided that in the case of a part-time employee whose hours are balanced over 4 weeks, the roster shall be displayed where practicable, at least 4 weeks prior to the commencing date of the first working period in the roster but in any event not less than one week prior, to the commencing date of the first working period in the roster.
- 9.3 Notwithstanding the foregoing provisions of this clause, a roster may be altered at any time to enable the nursing service of the hospital to be carried on where another employee is absent from duty on account of illness or in an emergency: Provided that where any such alteration involves an employee working on a day which would otherwise have been such employee's day off, the day off in lieu thereof shall be as mutually arranged.
- 9.4 Prior to the date of the changed shift, such change of roster shall be notified verbally or in writing to the employee concerned.
- 9.5 An employee may change their roster at short notice, with the agreement of their nurse unit manager or Director of Nursing for any reasonable ground.

- 9.6 An employer may change an employee's roster at short notice, with the agreement of the employee, for any reasonable ground including unexpected situations and unforeseen fluctuations in patient dependency.
- 9.7 Where an employee is entitled to an ADO, such day is to be shown on the roster of hours for that employee.
- 9.8 All rosters shall be retained for at least six years.

## **10. Salaries**

- 10.1 The minimum salaries per week shall be as set out in Table 1 – Monetary Rates, of Part B. The current minimum salaries are set out in Columns 2 and 3 of Table 1 – Monetary Rates. The parties have agreed that the following wage increases will apply:
- (a) 2.0% from the first pay period to commence on or after 1 July 2018 - Column 4;
  - (b) 2.1% from the first pay period to commence on or after 1 July 2019 - Column 5;
  - (c) 2.1% from the first pay period to commence on or after 1 July 2020 - Column 6.
- 10.2 (a) The allowances as set out in Table 2 - Allowances, of Part B shall be paid. The current allowances are set out in Column 4 of Table 2 - Allowances. The parties have agreed to the increases as set out in Columns 5 – 7.
- (b) Where an employee receives a rate of pay in excess of the rates set out in Table 1, the employee will maintain their above Agreement wage and will not be disadvantaged.
- 10.3 In relation to the salaries of Deputy Director of Nursing and Director of Nursing, "beds" means adjusted daily average of occupied beds.
- 10.4 The wage increase specified above are inclusive of any wage increases; determination or award of the FWC or any other authorised tribunal or commission made during the period of this Agreement. Any increase in the Award rates of pay shall be absorbed into the wage rates paid under this Agreement. Should the application of any increase awarded by the FWC result in rates applicable to the employees that are greater than those applying in this Agreement, those rates will be applied in lieu of the above increase from the date specified by the FWC.

## **11. Recognition of Service and Experience**

- 11.1 The employer shall notify each nurse in writing of the requirements of this clause at the time of the nurse's commencement of employment. If the employer does not so notify the nurse then the requirements of this clause shall not commence until the employer does so notify the nurse.
- 11.2 From the time of commencement of employment the nurse has three months in which to provide documentary evidence to their employer detailing any other 'service' or 'experience', as defined in Clause 5, Definitions, not disclosed at the time of commencement. This evidence, in the absence of other documentary evidence may take the form of a statutory declaration.
- 11.3 Until such time as the nurse furnishes any such documentation contemplated in 11.2 above the employer shall pay the nurse at the level for which documentary evidence has been provided.
- 11.4 If within three months of commencing employment a nurse does provide documentary evidence of other previous service or experience not disclosed at the time of commencement, the employer shall pay the nurse at the appropriate rate as and from the date of commencement that would have been paid from that date had the additional evidence been provided at that time.
- 11.5 If a nurse provides documentary evidence of other previous service or experience not disclosed at the time of commencement after the said three months period, the nurse shall be paid a rate appropriate for the previous service or experience then proved but only from the date of providing that evidence to the employer.



- 11.6 A nurse who is working as a nurse for more than one organisation shall notify each employer under this Agreement within one month of the end of each quarter of their hours of service or experience, as appropriate, worked with those other employers in the last quarter.
- 11.7 A nurse who is entitled to progress to the next year of service or experience (by reason of hours worked with other employers) as and from a particular date must provide documentary evidence of that entitlement within three months of that entitlement arising. If that proof is so provided the nurse shall be paid at the higher rate as and from the particular date. If the documentary evidence is provided outside that three month period the nurse shall be paid at the higher rate only from the date of proof.

## 12. Special Allowances

- 12.1 (a) A registered nurse in charge during the day, evening or night of a hospital having a daily average of occupied beds of less than 100 shall be paid, in addition to her or his appropriate salary, whilst so in charge, the sum set out in Item 1 of Table 2 (Part B), per shift.
- (b) A registered nurse in charge of a shift in a ward or unit during the day, evening or night in the absence of the Nursing Unit Manager shall be paid, in addition to her or his appropriate salary whilst so in charge the sum set out in Item 2 of Table 2 (Part B) per shift. This subclause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.
- (c) A registered nurse who is designated to be in charge of a ward or unit when the Nursing Unit Manager is not rostered for duty and who is also designated to be in-charge of a hospital with less than 100 beds during the day, evening or night on the same shift shall be paid an allowance per shift of the sum set out in Item 3 of Table 2 (Part B). This subclause shall only apply where the registered nurse is in charge of one or more other nurses in the ward or unit in question.
- (d) This subclause shall not apply to registered nurses holding classified positions of a higher grade than that of registered nurse.
- 12.2 (a) An employee required by their employer to be on call otherwise than as provided for in subclause 12.2(b) shall be paid the sum set out in Item 4 of Table 2 (Part B) for each period of 24 hours or part thereof provided that only one allowance shall be payable in any period of 24 hours.
- (b) An employee required to be on call on rostered days off in accordance with subclause 6.15(b) of Clause 6, Hours of Work and Free Time of Employees other than Directors of Nursing, shall be paid the sum set out in Item 5 of Table 2 (Part B) for each period of 24 hours or part thereof provided that only one allowance shall be payable in any period of 24 hours.
- (c) An employee who is directed to remain on call during a meal break shall be paid an allowance of the sum set out in Item 6 of Table 2 (Part B) provided that no allowance shall be paid if, during a period of 24 hours including such period of on call, the employee is entitled to receive the allowance prescribed in 12.2(a) above. If an employee is recalled to duty during such meal break, they shall be paid at overtime rates for the total period of the meal break.
- (d) Where an employee on call leaves the hospital and is recalled to duty, they shall be reimbursed all reasonable fares and expenses actually incurred provided that where an employee uses a motor car in these circumstances the allowance per kilometre payable shall be the rate determined by the Australia Taxation Office for business kilometres claimed when making a deduction using the cents per kilometre method. The provisions of this paragraph shall apply to all employees.
- (e) This subclause shall not apply to a Director of Nursing, Deputy Director of Nursing or Assistant Director of Nursing.

### 13. **Penalty Rates for Shift Work and Weekend Work**

- 13.1 All employees, whether shift workers or day workers, working afternoon or night shift shall be paid the following percentages in addition to the ordinary rate for such shift: Provided that employees who work less than 38 hours per week shall only be entitled to the additional rates where their shifts commence prior to 6.00 am or finish subsequent to 6.00 pm.
- Afternoon shift commencing at 10am and before 1pm – 10%
- Afternoon shift commencing at 1.00 pm and before 4.00 pm - 12.5%
- Night shift commencing at 4.00 pm and before 4.00 am - 15%
- Night shift commencing at 4.00 am and before 6.00 am - 10%
- 13.2 "**Ordinary rate**" and "**ordinary time**" shall not include any percentage addition by reason of the fact that an employee works less than 38 hours per week but shall include amounts payable under Clause 10, Salaries and Clause 12 Special Allowances.
- 13.3 For the purposes of this clause day, afternoon and night shifts shall be defined as follows:
- "**Afternoon shift**" means a shift which commences at or after 10.00 am and before 4.00 pm.
- "**Night Shift**" means a shift which commences at or after 4.00 pm and before 6.00 am on the day following.
- 13.4 A casual employee will be paid shift allowances calculated on the ordinary rate of pay excluding the casual loading, with the casual loading component then added to the penalty rate of pay.
- 13.5 Employees whose ordinary working hours include work on a Saturday and/or Sunday shall be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and one half and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. These extra rates shall be in substitution for and not cumulative upon the shift premiums prescribed in the subclause 13.1 of this clause.
- 13.6 Weekend penalties in subclause 13.5 shall be in substitution for and not cumulative upon the casual loading at subclause 21.8 for all employees other than Assistants in Nursing and Enrolled Nurses, who shall be entitled to the casual loading calculated on their ordinary rate of pay and then added to the weekend penalty.

### 14. **Fares and Expenses**

- 14.1 An employee required to travel in the performance of duty shall be paid all reasonable out of pocket expenses (including fares).
- 14.2 An employee who claims reimbursement of fares, pursuant to this clause, shall furnish to the employer, if so required, satisfactory proof that they have not received from another employer reimbursement in respect of those fares.

### 15. **Telephone Allowance**

If an employee is required for the purpose of their employment, to be on call, the employee shall be reimbursed for all telephone calls made by the employee in responding to a call to the hospital, upon production of satisfactory evidence to the employer.

### 16. **Uniform and Laundry Allowances**

- 16.1 Subject to subclause 16.3 of this clause, sufficient, suitable and serviceable uniforms, including one pair of shoes per annum which shall be of a recognised acceptable standard for the performance of nursing duties, and one cardigan or jacket shall be supplied free of cost to each employee required to wear a uniform. An employee to whom a new uniform or part of a uniform

has been issued who, without good reason, fails to return the corresponding article last supplied shall not be entitled to have such article replaced without payment therefore at a reasonable price.

16.2 An employee, on leaving the service of an employer, shall return any uniform or part thereof supplied by that employer which is still in use immediately prior to leaving.

16.3 (a) In lieu of supplying uniforms and shoes to an employee, an employer shall pay the said employee the sum set out in Item 7 of Table 2 (Part B), for uniforms and the sum set out in Item 8 of Table 2 (Part B) for shoes per week.

(b) In lieu of supplying stockings to an employee an employer shall pay the said employee the sum set out in Item 9 of Table 2 (Part B) per week.

(c) In lieu of supplying a cardigan or jacket to an employee an employer shall pay the said employee the sum set out in Item 10 of Table 2 (Part B) per week.

(d) If, in any hospital, the uniforms of an employee are not laundered at the expense of the hospital an allowance of the sum set out in Item 11 of Table 2 (Part B) shall be paid to the said employee; provided that the payment of such laundry allowance shall not be made to any employee on absences exceeding one week.

(e) Where the employer requires any employee to wear headwear, the hospital shall provide headwear free of charge to the employee.

(f) In lieu of supplying socks to an employee the employer shall pay the said employee the sum set out in Item 12 of Table 2 (Part B) per week.

(g) The allowances referred to in subclause 16.3 are also payable during any period of paid leave, with the exception of laundry allowance, which is paid for absences of 1 week or less.

## 17. Higher Grade Duty

17.1 An employee who is called upon to relieve an employee in a higher classification or is called upon to act in a vacant position of a higher classification shall be entitled to receive for the period of relief or the period during which they act the minimum payment for such higher classification provided the relieving is for three days or more.

17.2 The provisions of subclause 17.1 shall not apply where a Director of Nursing is absent from duty for a period of three working days or less for any reason other than Clause 7, Hours of Work and Free Time of Directors of Nursing.

## 18. Overtime

18.1 Subject to subclause 6.17 an employer may require an employee to work reasonable overtime

18.2 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.

18.3 For the purposes of subclause 18.2 what is unreasonable or otherwise will be determined having regard to subclause 6.17.

18.4 Overtime is paid in the following circumstances:

(a) All time worked by full time employees, other than the Director of Nursing, in excess of the rostered daily ordinary hours of work shall be overtime.

(b) (i) All time worked by part time employees, in excess of the rostered daily ordinary hours of work prescribed for the majority of full-time employees employed on that shift in the ward or section concerned shall be overtime.

(ii) Time worked by part time employees up to the rostered daily ordinary hours of work prescribed for a majority of the full-time employees employed on that shift in

the ward or section concerned shall not be regarded as overtime but an extension of the contract hours for that day and shall be paid at the ordinary rate of pay.

- (c) Casual employees will be entitled to overtime when they work:
  - (i) in excess of 10 hours per shift; or
  - (ii) in excess of 76 hours per fortnight.
- 18.5 Overtime shall be paid in accordance with the following:
  - (a) Monday to Saturday - Overtime shall be paid time and one half up to 2 hours each day and thereafter double time;
  - (b) Sunday - Overtime shall be paid at double time;
  - (c) Public Holidays - Overtime shall be paid double time and one-half;
  - (d) Overtime rates will be in substitution for and not cumulative upon the shift and weekend penalties prescribed in clause 13 – Penalty Rates for Shift and Weekend Work.
  - (e) Overtime rates will be in substitution for and not cumulative upon the casual loading for all employees other than Assistants in Nursing and Enrolled Nurses who shall be entitled to the casual loading calculated on their ordinary rate of pay and then added to the Overtime penalty calculated on their ordinary rate of pay.
- 18.6 The ordinary hours of work for the Director of Nursing shall be thirty eight hours per week and overtime will be paid time and one half for the two hours and double time thereafter.
- 18.7 An employee recalled to work overtime after leaving the employer's premises shall be paid for a minimum of four hours work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee shall be released from duty provided that this subclause does not apply to a Director of Nursing.
- 18.8 An employee required to work overtime following on the completion of their 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; provided that benefits of this subclause shall not apply to part time employees, until the expiration of the normal shift for a majority of the full-time employees employed on that shift in the ward or section concerned.
- 18.9 An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours shall be allowed twenty minutes for the partaking of a meal and a further twenty minutes after each subsequent four hour's overtime; all such time shall be counted as time worked.
- 18.10 The meals referred to in subclauses 18.8 and 18.9 of this clause shall be allowed to the employee free of charge. Where the hospital is unable to provide such meals, an allowance per meal of the sum set out in Item 13 of Table 2 (Part B), shall be paid to the employee concerned.
- 18.11 Where an employee is required to work an overtime shift on his or her rostered day off, the appropriate meal breaks for that shift, as prescribed by Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing shall apply.
- 18.12 If an employee is recalled to duty during a meal break, they shall be paid at overtime rates for the total period of the meal break.
- 18.13 An employee who works so much overtime:
  - (a) between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least ten consecutive hours off duty between these times; or
  - (b) on a Saturday, a Sunday and a holiday, not being ordinary working days, or on a rostered day off without having had ten consecutive hours off duty in the twenty-four hours

preceding their next day or shift; shall subject to this subclause, be released after completion of such overtime until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instruction of the employer such an employee resumes or continues to work without having such ten consecutive hours off duty they shall be paid at double time of the appropriate rate applicable on such day until they are released from duty for such period and they then shall be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

**18.14 Time off instead of payment for overtime**

- (a) An employee and the employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee on the following basis:

- (i) Assistants in Nursing. The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under subclause 18.14 an Assistant in Nursing who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

- (ii) Employees other than Assistants in Nursing. Time off in lieu of overtime is taken on the basis of hour for hour at ordinary pay.

EXAMPLE: By making an agreement under subclause 18.14 an employee, other than an Assistant in Nursing, who worked 2 overtime hours is entitled to 2 hours' time off.

- (b) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (c) If the employee requests at any time, to be paid for overtime covered by an agreement under subclause 18.14 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.
- (d) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in subclause 18.14(c), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (e) Nurses cannot be compelled to take time off in lieu of overtime.
- (f) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then subclause 18.14 will apply for overtime that has been worked.
- (g) If, on the termination of the employee's employment, time off for overtime worked by the employee to which subclause 18.14 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.
- (h) Records of all time off in lieu of overtime owing to nurses and taken by nurses must be maintained by the employer.

**19. Payment and Particulars of Salaries**

- 19.1 All salaries and other payments shall be paid weekly or fortnightly, provided that payment for any overtime worked may be deferred to the pay day next following the completion of the working cycle within which such overtime is worked, but for no longer; provided further that the payment of shift and weekend penalties relating to work performed in the second week of a fortnightly roster period may be deferred to the pay day next following the completion of the working cycle within which such shifts were worked, but for no longer.

- 19.2 Employees shall have their salary paid into one account with a bank or other financial institution as nominated by the employee. Salaries shall be deposited by hospitals in sufficient time to ensure that wages are available for withdrawal by employees by no later than pay day, provided that this requirement shall not apply where employees nominate accounts with non-bank financial institutions, but in such cases facilities shall take all reasonable steps to ensure that the wages of such employees are available for withdrawal by no later than pay day.
- 19.3 (a) Notwithstanding the provisions of subclause 19.2 of this Clause, an employee who has given or has been given the required notice of termination of employment, in accordance with Clause 34, Termination of Employment, shall be paid all moneys due to them prior to ceasing duty on the last day of employment.
- (b) Where an employee is summarily dismissed or their services are terminated without due notice, any moneys due to them shall be paid as soon as possible after such dismissal or termination but in any case not more than three days thereafter.
- 19.4 Pay Slips
- (a) On pay day each employee shall be provided with a pay slip in electronic form or hardcopy which complies with the relevant provisions of the Act. (See Regulation 3.46 of the *Fair Work Regulations* 2009 replicated below):
- (i) the employer's name; and
  - (ii) the employee's name; and
  - (iii) the period to which the pay slip relates; and
  - (iv) the date on which the payment to which the pay slip relates was made; and
  - (v) the gross amount of the payment; and
  - (vi) the net amount of the payment; and
  - (vii) any amount paid to the employee that is a bonus, loading, allowance, penalty rate, incentive-based payment or other separately identifiable entitlement; and
  - (viii) on and after 1 January 2010 the Australian Business Number (if any) of the employer.
- (b) If an amount is deducted from the gross amount of the payment, the pay slip must also include the name, or the name and number, of the fund or account into which the deduction was paid.
- (c) If the employee is paid at an hourly rate of pay, the pay slip must also include:
- (i) the rate of pay for the employee's ordinary hours (however described); and
  - (ii) the number of hours in that period for which the employee was employed at that rate; and
  - (iii) the amount of the payment made at that rate.
- (d) If the employee is paid at an annual rate of pay, the pay slip must also include the rate as at the latest date to which the payment relates.
- (e) If the employer is required to make superannuation contributions for the benefit of the employee, the pay slip must also include:
- (i) the amount of each contribution that the employer made during the period to which the pay slip relates, and the name, or the name and number, of any fund to which the contribution was made; or
  - (ii) the amounts of contributions that the employer is liable to make in relation to the period to which the pay slip relates, and the name, or the name and number, of any fund to which the contributions will be made.
- (f) The employer shall, upon written request from an employee, provide a record of that employees' current accrued leave entitlements.

## **20. Registration or Enrolment Pending**

- 20.1 A student who has completed the course of training prescribed by the Board and applied for registration or enrolment shall, upon registration or enrolment, be paid as from the date of application for registration or enrolment the salary to which they would have been entitled if registered or enrolled.
- 20.2 A nurse or enrolled nurse who has trained outside New South Wales shall be paid as a registered nurse or enrolled nurse as and from the date they are notified that they are eligible for registration or enrolment as a registered nurse or enrolled nurse provided that they make application for registration within seven days after being so notified.
- 20.3 They shall notify the employer as soon as possible after they have so applied.

## **21. Part-Time and Casual Employees**

### **PART 1 - Part Time Employees**

- 21.1
  - (a) A part-time employee is engaged to work less than an average of 38 ordinary 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 and the rostering arrangements which will apply to those hours.
  - (c) The terms of the agreement in subclause 21.1(b) may be varied by agreement in writing.
  - (d) The terms of this Agreement will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38
- 21.2 Hours Worked by Part Time Employees
  - (a) By agreement between the employer and employee, the minimum number of hours may be balanced over a week, a fortnight or four weeks.
  - (b) An employee whose hours are averaged over 4 weeks shall be paid each week or fortnight according to the employee's average weekly or fortnightly hours as is appropriate.
  - (c) Provided further that there shall be no interruption to the continuity of employment merely by reason of an employee, whose hours are balanced over a fortnight or over four weeks, not working in any one week in accordance with subclause 21.2(a).
- 21.3 Part time employees shall be paid an hourly rate calculated on the basis of:
  - (a) one thirty-eighth of the appropriate rate prescribed by Clause 10, Salaries; and,
  - (b) one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances; and
  - (c) one thirty-eighth of the appropriate allowances prescribed by Clause 16, Uniform and Laundry Allowance, but shall not be entitled to an additional day off or part thereof, as prescribed by subclause 6.4 of Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing.
- 21.4 Part time employees will be paid a minimum of 4 hours for each start.
- 21.5
  - (a) A public holiday occurring on a day on which the employee would normally be rostered to work shall be allowed to the employee without loss of pay
  - (b) A part time employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to their period of annual leave and be paid at the rate of one half time extra to the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.

- (c) (i) In lieu of adding to annual leave under subclause 21.5(b) an employee may elect to be paid for the time actually worked at the rate of time and one half in addition to their ordinary weekly rate.
- (ii) Such election shall be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
- (iii) Where payment is made in lieu of leave in respect of time worked on a public holiday, payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.
- (d) To the leave prescribed by subclauses 21.5(b) and 21.5(c) there shall be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave.

#### 21.6 Annual Review of Part-Time Hours

- (a) At the request of an employee, the hours worked by the employee will be reviewed annually.
- (b) Where the employees is regularly working more than their specified contracted hours, then it may be agreed that such contracted hours will be adjusted by the employer, to reflect the hours regularly worked. The agreement of the employer will not be unreasonably withheld. Such agreement will have regard to operational requirements, both present and projected.
- (c) The hours worked in the following circumstances will not be incorporated in the adjustment:
  - (i) If the increase in hours is as a direct result of an employee being absent on leave, such as for example, annual leave, long service leave, maternity leave, workers compensation; and
  - (ii) If the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a patient.
- (d) Any adjusted contracted hours resulting from the review identified in this subclause should, however, be such as to reflect roster cycles and shift configurations utilised in the workplace.
- (e) A part time employee who has been rostered on average 35 hours per week on a regular basis over a period of 6 months has the right to request to convert to full time employment.

### PART II - Casual Employees

21.7 A casual employee is one engaged on an hourly basis otherwise than as a part-time or full-time employee.

21.8 A casual employee shall be paid an hourly rate calculated on the basis of:

- (a) one thirty-eighth of the appropriate rate, prescribed by Clause 10, Salaries, and where applicable one thirty-eighth of the appropriate allowance or allowances prescribed by Clause 12, Special Allowances, plus a casual loading of 25% thereof in lieu of annual leave, annual leave loading, personal/carers leave, compassionate leave and notice of termination and redundancy;
- (b) one thirty-eighth of the appropriate allowances prescribed by Clause 16, Uniform and Laundry Allowances.

21.9 A casual employee will be paid a minimum of 4 hours for each engagement.

21.10 With respect to a casual employee the provisions of Clause 30, Deputy Directors of Nursing, Assistant Directors of Nursing; Clause 7, Hours of Work and Free Time of Directors of Nursing;



Clause 9, Rosters; and Clause 23, Annual Leave, shall not apply. Further, casual employees shall not be entitled to an additional day off or part thereof as prescribed by subclause 6.4 of Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing.

- 21.11 In accordance with the NES, casual employees have no entitlement to paid annual leave or paid personal/carers leave.
- 21.12 A casual employee who is required to and does work on a public holiday shall be paid for the time actually worked at the rate of double time and one-half, such payment being in lieu of weekend or shift allowances which would otherwise be payable had the day not been a public holiday and in lieu of the 25% casual loading prescribed at clause 21.8(a).
- 21.13 For the entitlement to payment in respect of long service leave, see the *Long Service Leave Act 1955*.
- 21.14 Casual Conversion
- (a) A casual employee, who has been rostered on a regular and systematic basis over a period of six months, has the right to request conversion to permanent employment.
    - (i) On a full time basis where the employee has worked on a full time basis throughout the period of casual employment; or
    - (ii) On a part time contract where the employee has worked on a part time basis throughout the period of casual employment. Such contract would be on the basis of the same number of hours previously worked, unless other arrangements are agreed between the employer and the employee.
  - (b) The employer may consent or refuse the request, but shall not unreasonably withhold agreement to such a request
  - (c) 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 another employee being absent on leave, such as for example, annual leave, long service leave, parental leave, workers compensation; and
    - (ii) If the increase in hours is due to a temporary increase in hours only due, for example, to specific needs of a patient or the workflow requirements in a department or unit.
  - (d) Any adjusted contracted hours resulting from the review should, however, be such as to reflect roster cycles and shift configurations used in the workplace.

## **22. Public Holidays**

22.1. Public holidays observed under this Agreement are:

- (a) New Year's Day;
- (b) Australia Day;
- (c) Good Friday;
- (d) Easter Saturday;
- (e) Easter Sunday;
- (f) Easter Monday;
- (g) Anzac Day;
- (h) Queen's Birthday;
- (i) Local Labour Day;

- (j) Christmas Day;
- (k) Boxing Day;
- (l) any other day or half day declared by or in accordance with the Public Holidays Act 2010 (or its successor) as a public holiday or a local public holiday within the area in which the hospital is situated; and
- (m) an extra public holiday each year on the August Bank Holiday or on a date agreed by the respective employees and, if requested by an employee, any nominated representative which may be a union representative. This additional day may be taken by agreement between Christmas and the 5th day of the new calendar year, provided that such day is placed between Monday to Friday (inclusive) which is not gazetted as a public holiday. This extra (August Bank Holiday) public holiday does not apply in areas where in each year:
  - (i) a local Public Holiday is declared and observed by or in accordance with the Public Holidays Act 2010 (or its successor); or
  - (ii) two half local Public Holidays are declared and observed by or in accordance with the Public Holidays Act 2010 (or its successor).
- (n) In areas where in each year only one half day local Public Holiday is declared and observed the whole day is to be regarded and observed as a public holiday, and no extra (August Bank Holiday) public holiday in accordance with subclause 23.1(m) will be observed.

## 23. Annual Leave

- 23.1. (a) Employees are entitled to annual leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 6 of the Act).
- (b) Casual employees have no entitlement to annual leave.
- (c) The entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

### 23.2. Accrual of Annual Leave

- (a) For the purpose of the additional week of annual leave provided by the NES, a **shift worker is an employee who:**
  - (i) is regularly rostered over seven days a week; and
  - (ii) regularly works on weekends.
- (b) Full time employees required to work on a seven (7) day basis, including those who are not shift workers for the purposes of subclause 23.2(a) will receive:
  - (i) Six (6) weeks annual leave per annum. This includes the annual leave entitlements under the NES; and
  - (ii) Counter leave in accordance with subclause 23.3.
- (c) All other employees are entitled to four (4) weeks annual leave and the greater of
  - (i) Counter leave in accordance with subclause 23.3; or
  - (ii) One (1) additional week of annual leave in accordance with subclause 23.2(a).

### 23.3. Counter Leave

- (a) Subject to subclauses 23.2(b) and 23.2(c), full time and part time employees who are rostered to work their ordinary hours on Sundays and/or public holidays shall be entitled to receive additional paid annual leave, if during each 12-month period of continuous service the employee has worked:

Number of ordinary shifts worked on Sundays and/or Public Holidays during each year of service	Additional Annual Leave
4 – 10	1 day
11 – 17	2 days
18 – 24	3 days
25 – 31	4 days
32 or more	5 days

- (b) Part time employees will be entitled to counter leave in the same proportion as their ordinary hours of work bear to full-time hours.
  - (c) An employee who is entitled to counter leave may elect to be paid an amount equivalent to the value of their counter leave entitlement in lieu of taking the additional leave. Such election is to be made in writing by the employee at the commencement of each year of employment and is irrevocable during the currency of that year of employment.
  - (d) On termination of employment employees are to be paid for any untaken annual leave due under clause 23 Annual Leave.
- 23.4.
- (a) An employee to whom subclause 23.2(b) applies and who is required to and does work on a public holiday shall be paid, in addition to the appropriate ordinary weekly rate of pay, at the rate of one half time extra for the time actually worked on such holiday. Such payment shall be in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday.
  - (b) To leave prescribed by subclause 23.2(b) there shall be added one working day or one half working day for each special public holiday or half public holiday (not being one of the eleven (11) specifically named public holidays prescribed by subclause 22.1, or a special day proclaimed in lieu of any of them) which may occur during the year of service for annual leave or during the period of annual leave.
  - (c) A public holiday occurring on a day that the employee would normally work shall be allowed to employees covered by subclause 23.2(c) on full pay; provided that an employee who is required to and does work on a public holiday shall have one day or one half day, as appropriate, added to their period of annual leave and be paid at the rate of one half time extra for the time actually worked. Such payment is in lieu of any additional rate for shift work or weekend work which would otherwise be payable had the day not been a public holiday. In lieu of adding to annual leave under subclause 23.4(c) an employee may elect to be paid for the time actually worked at the rate of time and one half in addition to their ordinary weekly rate. Such election shall be made on the commencement of employment and then on the anniversary date each year.
  - (d) The employee may not alter such election during the year except with the agreement of the employer. Where payment is made in lieu of leave in respect of the time worked on a public holiday payment shall be made for a minimum of four hours work, and any balance of the day or shift not worked shall be paid at ordinary rates.
  - (e) Where a public holiday falls on a rostered day off of a shift worker as defined in Clause 5, Definitions, and who receives four (4) weeks annual leave in accordance with subclause 23.2(c), such shift worker shall be paid one day's pay in addition to the weekly rate or if the employee so elects shall have one day added to the period of annual leave.
  - (f) To the leave prescribed by subclause 23.2(c) there shall be added one working day for each public holiday or one half working day for each half public holiday which occurs on what would have been an ordinary working day during a period of annual leave; provided that in the case of a shift worker referred to in subclause 23.4(e) the provision of this subclause 23.4(f) shall apply to any public holidays falling during the period of annual leave.
  - (g) Where a public holiday falls on a day which the employee would not normally work such employee will not be entitled to payment for the public holiday.

- 23.5. (a) **Taking of Annual Leave** – An employee is entitled to take an amount of annual leave during a particular period if:
- (i) at least that amount if annual leave is credited to the employee; and
  - (ii) the employer has authorised the employee to take the annual leave during that period.
- (b) An employee will request annual leave, in writing, at least two (2) weeks prior to the date on which the leave would commence.
- (c) Credit of time towards an additional day off duty shall not accrue when an employee is absent on unpaid leave. Full time employees entitled to additional days off duty in accordance with Clause 6, Hours of Work and Free Time of Employees Other Than Directors of Nursing, shall accrue credit towards an additional day off duty in respect of each day those employees are absent on additional annual leave in accordance with subclauses 23.4(b) and subclause 23.4(c).
- 23.6. Annual leave shall be taken in an amount and at a time which is approved by the employer subject to the operational requirements of the workplace. The employer shall not unreasonably withhold or revoke such approval.
- 23.7. **Excessive leave accruals: general provision**
- (a) An employee has an excessive leave accrual if the employee has accrued more than 8 weeks' paid annual leave; or 10 weeks' paid annual leave for a shiftworker, as defined in subclause 23.2(a); or 12 weeks' paid annual leave for a full-time 7 day worker as defined in subclause 23.2(b).
  - (b) If an employee has an excessive leave accrual, 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.
  - (c) Subclause 23.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
  - (d) Subclause 23.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.
- 23.8. **Excessive leave accruals: direction by employer that leave be taken**
- (a) If an employer has genuinely tried to reach agreement with an employee under subclause 23.7(b) 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.
  - (b) However, a direction by the employer under subclause 23.8(a):
    - (i) 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 (whether made under subclause 23.7, 23.8 or 23.9 or otherwise agreed by the employer and employee) are taken into account; and
    - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
    - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
    - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
  - (c) The employee must take paid annual leave in accordance with a direction under subclause 23.8(a) that is in effect.
  - (d) An employee to whom a direction has been given under subclause 23.8(a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in subclause 23.8(d) may result in the direction ceasing to have effect. See subclause 23.8(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

**23.9. Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under subclause 23.7(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under subclause 23.9(a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under subclause 23.8(a) that, when any other paid annual leave arrangements (whether made under subclause 23.7, 23.8, or 23.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under subclause 23.9(a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under subclause 23.7, 23.8, or 23.9 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under subclause 23.9(a) more than 4 weeks' paid annual leave; or 5 weeks' paid annual leave for a shiftworker, as defined by subclause 23.2(a); or 6 weeks' paid annual leave for a full-time 7 day worker as defined in subclause 23.2(b), in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under subclause 23.9(a).

**23.10. Cashing out of Annual Leave**

- (a) The employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement signed by the employer and employee, which must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (c) 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.
- (d) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (e) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.

- (f) The employer must keep a copy of any agreement under subclause 23.10 as an employee record.

#### **23.11. Annual Leave in advance**

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (c) The employer must keep a copy of any agreement under subclause 23.11 as an employee record.
- (d) Annual leave loading is payable to an employee who takes an annual holiday in advance.
- (e) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under subclause 23.11 the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

#### **23.12. Annual Leave and Service**

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

### **24. Annual Leave Loading**

- 24.1 In addition to their Annual Leave payment, an employee will be paid the higher of:
  - (a) an annual leave loading of 17.5% of their Annual Leave; or
  - (b) the shift and weekend penalties the employee would have received had they not been on leave during the relevant period.
- 24.2 The Annual Leave loadings in subclause 24.1 are not payable for days which have been added to be taken in conjunction with annual leave in accordance with the election provisions of clause 22 - Public Holidays.
- 24.3 Shift allowances and weekend penalties are not payable for public holidays which occur during a period of annual leave.
- 24.4 No loading is payable on the counter leave as set out in subclause 23.3.
- 24.5 Annual leave loading is payable to an employee who takes an annual holiday in advance.

### **25. Long Service Leave**

- 25.1 For long service leave falling due after 20th February 1981 the following provisions shall apply:
  - (a) (i) Every employee after ten years' continuous service with the same employer shall be entitled to two months' long service leave on full pay; after fifteen years' continuous service to an additional one month's long service leave on full pay; and for each five years' continuous service thereafter to an additional one and one half months' long service leave on full pay. Such leave shall be taken at a time to be mutually arranged between the employer and the employee.
  - (ii) Permanent employees with at least five (5) years continuous service with the employer as at 21<sup>st</sup> April 2008, whose service is terminated, except on the

grounds of misconduct, shall be entitled to receive one (1) month's long service leave on full pay after five (5) years to a proportionate amount of such leave on full pay calculated on the basis of two (2) months leave for ten (10) years' service.

- (iii) Where services of an employee with more than five years continuous service are terminated by the employer for grounds other than misconduct, the employer shall pay pro rata long service leave.
- (iv) Where an employee resigns after 5 years continuous service on the grounds of illness, incapacity or pressing domestic necessity, the employer shall pay pro rata long service leave.
- (b) Where an employee has acquired a right to long service leave under subclause 25.2(a), then and in every such case:
  - (i) If before such leave has been entered upon the employment of such employee has been terminated such employee shall be entitled to receive the monetary value of the leave to which such employee has been entitled computed at the rate of salary which such employee had been receiving immediately prior to the termination of employment.
  - (ii) If such employee dies before entering upon such long service leave, or if after having entered upon the same dies before its termination, any accrued long service leave will be paid out in accordance with Section 4 (Long Service Leave) subsection (5)(b) of the Long Service Leave Act 1955 (NSW). This provides that where a worker dies and any long service leave:
    - A. to which the worker was entitled has not been taken; or
    - B. accrued upon termination of the services of the worker by reason of the worker's death and has not been taken,the employer shall upon request by the worker's personal representative pay to the worker's personal representative in full the ordinary pay that would have been payable to the worker in respect of long service leave less any amount already paid to the worker in respect of that leave.
- (c) For the purpose of this clause:
  - (i) Continuous service with the same employer prior to the coming into force of this Agreement shall be taken into account.
  - (ii) One month equals four and one-third weeks.
  - (iii) Continuous service shall be deemed not to have been broken by:
    - A. any period of absence on leave without pay not exceeding six months;
    - B. absence of an employee from the hospital whilst a member of the Defence Forces of the Commonwealth in time of war.
- (d) Where any employee has been granted a period of long service leave prior to the coming into force of this agreement the amount of such leave shall be debited against the amount of leave due under this agreement.
- (e) Any period(s) of part-time employment with the same employer shall count towards long service leave. Such long service leave shall be paid for on the basis of the proportion that the average number of hours worked per week bears to 38 hours.
- (f)
  - (i) Where a full time employee has accrued a right to an ADO on pay prior to entering a period of long service leave such day shall be taken on the next working day immediately following the period of long service leave.
  - (ii) An employee returning to duty from long service leave shall be given the next additional day off duty in sequence irrespective of whether sufficient credits have been accumulated or not.

25.2 An employee must take an amount of accumulated long service leave during a particular period if the employee is directed to do so by the employer. The employer shall give the employee at

least one months' notice. Provided that, where an employee makes a written request to take long service leave which has not been approved by the employer, that employee shall not be directed to take long service leave for a period of 12 months after that request.

- 25.3 The provisions of this clause shall apply for Long Service Leave. Where the provisions of this clause are more beneficial these provisions shall apply. Where this clause is silent the provisions of the *Long Service Leave Act 1955* shall apply.

## **26. Compassionate Leave**

Compassionate Leave is provided for in the NES.

### **26.1 Entitlement to compassionate leave.**

- (a) An employee is entitled to up to 2 days of compassionate leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household:
  - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
  - (ii) sustains a personal injury that poses a serious threat to his or her life; or
  - (iii) dies.
- (b) Where the employee is involved in funeral arrangements, travelling etc., leave may be allowed for up to 3 days for each permissible occasion.

### **26.2 Taking compassionate leave**

- (a) An employee may take compassionate leave for a particular permissible occasion as:
  - (i) a single continuous period; or
  - (ii) separate periods of 1 day each; or
  - (iii) any separate periods to which the employee and his or her employer agree.
- (b) If the permissible occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

### **26.3 Payment for compassionate leave (other than for casual employees)**

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

### **26.4 Other Circumstances**

- (a) The above principles are not intended to codify completely purposes for which compassionate leave with pay may be allowed. The element of unforeseen emergency could be present in other situations, eg. floods and bushfires, which clearly prevent attendance for duty.
- (b) In view of the purpose for which compassionate leave is intended, it is not possible to prescribe a precise limitation of the amount of leave to be granted in a given period. It is suggested, however, that only under the most exceptional circumstances should leave exceeding a total of three days be granted to an employee in any year other than in accordance with subclause 26.1.
- (c) Where an employee is forced to absent themselves other than in accordance with subclause 26.1 or in circumstances that do not reasonably constitute an unforeseen emergency, the employee can cover such an absence by applying for unpaid compassionate leave, leave with pay or, if the employee so desires, taking annual leave.



## **26.5 Notice and Evidence Requirements**

- (a) To be entitled to Compassionate Leave an employee must give the employer notice of the period or expected period of the leave as soon as reasonably practicable (which may be at a time before or after the leave has started) that the employee is (or will be) absent from his or her employment.
- (b) The employer may require an employee to provide evidence that would satisfy a reasonable person that the leave was taken for a permissible reason or occasion.

## **26.6 Service**

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

# **27. Personal/Carer's Leave**

## **27.1 The National Employment Standards (NES)**

- (a) Employees are entitled to personal/carers leave in accordance with the NES.
- (b) Casual employees have no entitlement to paid personal/carers leave, but do have an entitlement to unpaid personal/carers leave.

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

- (a) For each year of service with the employer, an employee is entitled to 10 days of paid personal/carers leave.
- (b) An employee's entitlement to paid personal/carers leave accrues progressively during a year of service according to the employee's ordinary hours of work, and accumulates from year to year.

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

An employee may take paid personal/carers leave:

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

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

- (a) If an employee takes a period of paid personal/carers leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (b) An employee is not entitled to be paid personal leave whilst they are in receipt of workers' compensation payments.

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

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

## **27.6 Unpaid Carer's Leave**

- (a) An employee is entitled to 2 days' unpaid carer's leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:
  - (i) a personal illness, or personal injury, affecting the member; or
  - (ii) an unexpected emergency affecting the member.
- (b) An employee may take unpaid carer's leave as:
  - (i) a single continuous period of up to 2 days: or
  - (ii) any separate periods agreed with the employer.
- (c) This entitlement extends to casual employees and the employer agrees not to fail to re-engage a casual employee because the employee accessed the entitlements provided for in this subclause. The rights of the employer to engage or not to engage a casual employee are otherwise not affected
- (d) An employee is entitled to unpaid carer's leave for a particular occasion only if the employee cannot take an amount of paid personal/carer's leave.

#### **27.7 Personal Leave Notice**

- (a) To be entitled to personal leave during a period, an employee must give the employer notice as soon as reasonably practicable (which may be at a time before or after the personal leave has started) that the employee is (or will be) absent from his or her employment during the period because of a personal illness, or injury, of the employee. Employees should, where reasonably practicable, make every endeavour to give the employer at least two hours' notice when unable to attend duty on afternoon and night shifts.
- (b) This requirement does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.

#### **27.8 Personal Leave Evidence**

- (a) If the employer requires an employee to give the employer documentary evidence in relation to a period of personal leave taken (or to be taken) by the employee:
  - (i) To be entitled to personal leave during the period, the employee must give the employer as soon as reasonably practicable (which may be at a time before or after the personal leave has started):
    - A. If it is reasonably practicable to do so - a medical certificate from a registered health practitioner stating that in their opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
    - B. if it is not reasonably practicable for the employee to give the employer a medical certificate - a statutory declaration made by the employee stating that the employee was, is, or will be unfit for work during the period because of a personal illness or injury.
  - (ii) This requirement does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.

#### **27.9 Carer's Leave Notice**

- (a) To be entitled to carer's leave during a period, an employee must give the employer notice as soon as reasonably practicable (which may be at a time before or after the carer's leave has started) that the employee requires (or required) leave during the period to provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires (or required) care or support because of:
  - (i) a personal illness, or injury, of the member; or
  - (ii) an unexpected emergency affecting the member.

- (b) This requirement does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.

**27.10 Carer's Leave Evidence:** If the employer requires an employee to give the employer documentary evidence in relation to a period of carer's leave taken (or to be taken) by the employee:

- (a) To be entitled to carer's leave during the period, the employee must give the employer as soon as reasonably practicable (which may be at a time before or after the carer's leave has started):
  - (i) if the care or support is required because of a personal illness, or injury, of the member - a medical certificate from a registered health practitioner or a statutory declaration made by the employee; or
  - (ii) if the care or support is required because of an unexpected emergency affecting the member - a statutory declaration made by the employee; and
- (b) The document must include a statement to the effect that:
  - (i) if the document is a medical certificate - in the registered health practitioner's opinion, the member requires care and support during the period because the member had or has a personal illness or injury during the period; or
  - (ii) if the document is a statutory declaration - the employee requires (or required) leave during the period to provide care or support to the member because the member requires (or required) care or support during the period because of:
    - A. a personal illness, or injury, of the member; or
    - B. an unexpected emergency affecting the member.
  - (iii) This requirement does not apply to an employee who could not comply with it because of circumstances beyond the employee's control.

**27.11 Cashing out of Paid Personal/Carer's Leave**

- (a) **Entitlement** - An employee is entitled to forgo an entitlement to take any or all of the amount of paid personal/carers leave credited to the employee under the NES that exceeds the protected amount of paid personal/carers leave if:
  - (i) the employee gives the employer a written election to forgo the amount of paid personal/carers leave; and
  - (ii) the employer authorises the employee to forgo the amount of paid personal/carers leave.
- (b) **Payment** - The employee shall receive pay in lieu of the amount of paid personal/carers leave at the employee's ordinary pay at the time the election referred to in sub-clause 26.9(a) is made.

**27.12 Time Off in Lieu of Payment for Overtime**

- (a) For the purpose only of providing care and support for a person in accordance with subclause 27.3(b) and despite the provisions of Clause 18, Overtime, the following provisions shall apply.
- (b) Where an employee has exhausted their paid personal/carers leave entitlement, an employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
- (c) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (d) If, having elected to take time as leave in accordance with subclause 27.12(a), the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.

- (e) Where no election is made in accordance with subclause 27.12(a), the employee shall be paid overtime rates in accordance with the Agreement.

#### **27.13 Make-up time**

- (a) An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Agreement at the ordinary rate of pay.
- (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

#### **27.14 Personal / Carers Leave and Rostered Days Off**

- (a) Where an employee has exhausted their paid personal/carer's leave entitlement, an employee may elect, with the consent of the employer, to take a rostered day off at any time.
- (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
- (d) This subclause is subject to the employer informing the affected employees and their workplace representatives of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the affected employees and their workplace representatives to participate in negotiations.

#### **27.15 Personal/Carer's Leave and Service**

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

### **28. Staff Amenities**

The employer shall provide for the use of employees:

- 28.1 A suitable changing room and adequate washing and toilet facilities;
- 28.2 A locker fitted with lock and key or other suitable place for the safe keeping of clothing and personal effects of such employee;
- 28.3 An employer shall provide for an employee morning and afternoon tea, supper and early morning tea (which shall include tea or coffee together with milk and sugar) when the employee is on duty, at times appropriate for the partaking thereof, and shall provide also for such an employee, who requires them, meals of a reasonable standard, which fall due during the duty period, and for such meals so provided may make a charge, provided that the charge for breakfast shall be the sum set out in Item 14 of Table 2 (Part B) and the sum set out in Item 15 of Table 2 (Part B) for other meals.

### **29. Escort Duty**

- 29.1 Periods during which an employee, other than Director of Nursing, is engaged in nursing duties, viz, in attendance on a patient, shall be paid as working time under this Agreement. Where applicable, overtime shall be payable.

- 29.2 All reasonable out-of-pocket expenses shall be reimbursed.
- 29.3 Rostered time shall be paid as such even though an employee may be travelling, in hotel/motel accommodation, or waiting for transport.
- 29.4 In respect of non-rostered time not spent in nursing duties:
- (a) Periods in hotel/motel accommodation or waiting for transport shall not be counted as working time;
  - (b) Periods in travelling shall count as working time.

**30. Deputy Directors of Nursing, Assistant Directors of Nursing**

- 30.1 The following appointments shall be made in the hospital with adjusted daily averages of occupied beds as specified hereunder:
- (a) Less than 50 beds – a Deputy Director of Nursing except where
    - (i) the Registered Nurses at the hospital are all given the same duties and no Registered Nurse is delegated Deputy Director of Nursing duties; and
    - (ii) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.
  - (b) 50 beds and over but less than 75 beds – a Deputy Director of Nursing except where
    - (i) at least two full time equivalent Nursing Unit Managers are employed; and
    - (ii) the Director of Nursing perceives no requirement for a Deputy Director of Nursing to be employed.
- 30.2 Appointments under subclause 30.1 shall be made within two calendar months of the occurrence of a vacancy. In default of appointment within the said period of two calendar months of the occurrence of a vacancy, the registered nurse employed as such or in a higher classification who has customarily relieved, in the vacant position, or if no one has so customarily relieved, the registered nurse employed in the same or the next senior classification at the hospital, shall be deemed to be appointed until such time as another appointment is made by the hospital.

**31. Medical Examination of Nurses**

- 31.1 Medical examination of nurse will be in accordance with South Pacific Private policy as varied from time.
- 31.2 The costs involved in the various screening and protection procedures shall be borne by the employer.

**32. Domestic Work**

- 32.1 Except as hereinafter provided, nurses, enrolled nurses and assistants-in-nursing shall not be required to perform, as a matter of routine, the following duties, viz: washing, sweeping, polishing and/or dusting of floors, walls or windows of wards, corridors, annexes, bathrooms or verandas, nor any duties which are generally performed by classifications other than nursing staff: but this provision shall not preclude the employment of nurses, enrolled nurses and assistants-in-nursing on any of such duties in an isolation block or where the performance of those duties involves disinfection.
- 32.2 Nothing in subclause 32.1 of this clause shall preclude an enrolled nurse or an assistant-in-nursing from being required to perform all or any of the specified duties during the first thirteen weeks of training or experience, as the case may be.
- 32.3 Nothing in subclause 32.1 of this clause shall preclude any employee from being required to perform all or any of the specified duties at any time when domestic staff is not available to perform them; provided that the employer has made all reasonable efforts to obtain domestic staff.

### 33. Labour Flexibility

- 33.1 An employer may direct an employee to carry out duties as are within the limits of the employee's skill, competence and training. Such duties may include work which is incidental or peripheral to the employee's main tasks provided that such duties are not designed to promote deskilling nor are inconsistent with Clause 32, Domestic Work.
- 33.2 Any employer may direct an employee to carry out duties and use such 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 equipment. Any such direction issued by the employer shall be consistent with the employer's responsibility to provide a safe and healthy working environment for employees and the employer's duty of care to patients.

### 34. Termination of Employment

- 34.1 Employment, other than of a casual, will be terminated only by appropriate notice on either side or by the payment by the employer or forfeiture by the employee of wages in lieu of notice. Provided that employment may be terminated by part of the period of notice specified, and part payment or forfeiture, in lieu of the period of notice specified. Subclause 34.7 shall not apply to employment of an employee on probation.
- 34.2 The employer may, without notice, summarily dismiss an employee at any time for serious misconduct. Payment is up to the time of dismissal only.
- 34.3 In respect of any forfeiture by the employee of wages in lieu of notice, the employee may at any time authorise the employer to deduct from his or her wages payable up to, or on termination, relevant wages payable in lieu of notice. Should an employer not receive such an authorisation from the employee and make the applicable deduction in whole, the employer can seek to recover, from the employee, such outstanding payment or sum or amount payable or owing by the employee pursuant to this clause in any court of competent jurisdiction.
- 34.4 The requirement for an employee to provide notice under this clause shall not apply in circumstances where the employee is entitled to bring the employment to an end because of the actions of the employer, for example, because of a repudiatory breach of the employment contract by the employer.
- 34.5 In respect of the requirement for an employer to provide or pay notice under this clause, nothing in this clause shall exclude the application of Subdivision C of Division 11 of Part 2-2 of the Act.
- 34.6 Except in the case of summary dismissal, it is the intention of this clause that both the employer and the employee provide appropriate notice upon termination, or pay or forfeit such notice in wages. The application and interpretation of this clause shall give this intention full effect.

#### 34.7 Notice of termination by the employer:

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

#### 34.8 Notice by employee -

- (a) the notice of termination required to be given by an employee is the same as that required of the employer except there is no requirement on the employee to give additional notice based on the age of the employee concerned.
  - (b) A Director of Nursing shall give four (4) weeks notice of termination in writing.
  - (c) Casuals shall only be required to give notice to the end of the current shift worked.
- 34.9 Upon the termination of the services of an employee, the employer shall furnish the employee with a written statement, signed by or on behalf of the employer, setting out the period of the employment and the capacity in which the employee was employed.
- 34.10 Employees who have accrued ADO's shall be paid for such accrued time at ordinary rate of pay upon termination.

**35. Attendance at Meetings and Fire Drills**

- 35.1 Any employee required to work outside the ordinary hours of work in satisfaction of the requirements for compulsory fire safety practices (fire drill and evacuation procedures) contained from time to time within the Private Health Facilities Act 2007 and the regulations made there under, shall be entitled to be paid at the appropriate rate for the actual time spent in attendance at such practices. In lieu of receiving payment, employees may with the agreement of the employer be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings.
- 35.2 Any employee required to attend Workplace Health and Safety Committee and/or Board of Management meetings in the capacity of employee representative shall, if such meetings are held outside the ordinary hours of work, be entitled to receive payment at the "ordinary rate" for the actual time spent in attendance at such meetings. In lieu of receiving payment, employees may with the agreement of the employer be permitted to be free from duty for a period of time equivalent to the period spent in attendance at such meetings. Such time spent in attendance shall not be viewed as overtime for the purposes of this Agreement.
- 35.3 For the purposes of this clause "ordinary rate" shall include amounts payable under Clause 10, Salaries, and Clause 12, Special Allowances, of this Agreement; plus, where appropriate, the 25% casual loading prescribed in subclause 21.8.

**36. Resolution of Disputes**

- 36.1 In the event of a dispute about any matter, including in relation to this Enterprise Agreement and the NES, but not including the actual termination of employment, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- 36.2 The parties agree that disputes in relation to requests for reasonable working arrangements and extending a period of unpaid parental leave may be dealt with under the terms of this clause.
- 36.3 An employer or employee may appoint another person or the Union to accompany and/or represent them for the purposes of this clause.
- 36.4 If a dispute is unable to be resolved at the workplace, and all appropriate steps under subclause 36.1 have been taken, a party to the dispute may refer the dispute to the FWC. This is not intended to prevent a party referring the dispute to another statutory tribunal if that is more appropriate.
- 36.5 Where the matter in dispute remains unresolved, the FWC may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

- 36.6 The parties agree that the FWC shall have the power to do all such things as are necessary for the just resolution of the dispute including mediation, conciliation and arbitration.
- 36.7 The FWC shall be provided access to the workplace to inspect or view any work, material, machinery, appliance, article, document or other thing or interview any employee who is usually engaged in work at the workplace.
- 36.8 The parties agree that the FWC may give all such directions and do all such things as are necessary for the just resolution, remedy and determination of the dispute.
- 36.9 Subject to any review of the FWC decision or direction relating to the dispute, the decision or direction shall be accepted by all affected parties as a settlement of the dispute and shall be implemented by them.
- 36.10 The parties agree to confer immunity on the FWC for all matters relating to the dispute resolution between the parties.
- 36.11 While the dispute resolution procedure is being conducted, the status quo must remain and work must continue in accordance with this agreement and the Act. Subject to applicable workplace health and safety legislation, an employee must not unreasonably fail to comply with a direction by the employer to perform work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.

### **37. Anti-Discrimination**

It is the intention of the parties bound by this Agreement to achieve the object in section 3(e) of the *Act* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, colour, sex, sexual preference, age, marital status, physical or mental disability, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, homosexuality, transgender identity and age.

### **38. Parental Leave**

- 38.1 Parental Leave entitlements are governed by the NES. The following provisions shall also apply in addition to those set out in the NES.

#### **38.2 The Basic Entitlement**

- (a) After 12 months continuous service parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child.
- (b) Parents may simultaneously take an unbroken period of one week of leave at the time of the birth of the child (or up to three weeks in the case of an adoption).
- (c) Return to work after parental leave:
  - (i) An employee returning to work after a period of parental leave is entitled to be employed in:
    - (A) the position held by the employee immediately before proceeding on that leave, or
    - (B) if the employee worked part-time or on a less regular casual basis because of the pregnancy before proceeding on maternity leave—the position held immediately before commencing that part-time work or less regular casual work, or
    - (C) if the employee was transferred to a safe job before proceeding on maternity leave—the position held immediately before the transfer.
  - (ii) If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position as nearly as possible comparable in status and pay to that of the employee's former position.



- (iii) In this section, a reference to employment in a position includes, in the case of a casual employee, a reference to work for an employer on a regular and systematic basis
- (d) **Transfer to a safe job**
  - (i) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or new born child. The assessment of such a risk is to be made on the basis of a medical certificate supplied by the employee and of the obligations of the employer under the *Work Health and Safety Act 2011*.
  - (ii) The employer is to temporarily adjust the employee's working conditions or hours of work to avoid exposure to that risk.
  - (iii) If such an adjustment is not feasible or cannot reasonably be required to be made, the employer is to transfer the employee to other appropriate work that:
    - (A) will not expose her to that risk, and
    - (B) is as nearly as possible comparable in status and pay to that of her present work.
  - (iv) If such a transfer is not feasible or cannot reasonably be required to be made, the employer is to grant the employee maternity leave (or any available paid sick leave) for as long as is necessary to avoid exposure to that risk, as certified by a medical practitioner.

### 38.3 **Communication during Parental Leave**

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
  - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
  - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a) of this subclause.

### 38.4 **Paid Parental Leave**

- (a) Parental leave is governed by legislation currently the NES and the Federal Paid Parental Leave Scheme (18 weeks' pay at the minimum wage).
- (b) Nurses will be entitled to parental leave pursuant to the NES and will also be entitled to an additional payment to top up their wages to their ordinary rate of pay for the 18 weeks of parental leave. The top up payment will be determined by averaging the number of hours worked per week on average for the preceding twelve (12) months.
- (c) Superannuation payments paid by the employer in accordance with the provisions in Clause 39 Superannuation will continue to be paid whilst on paid parental leave.

## 39. **Superannuation**

### 39.1 **Definitions**

- (a) "Default fund" means the Health Employees' Superannuation Trust Australia (H.E.S.T.A.) which offers a MySuper product. Should an employee fail to nominate a fund, the employer will pay superannuation contributions into the default fund.
- (b) "Complying regulated fund" means a superannuation fund that is regulated under the Superannuation Industry (Supervision) Act 1993 and has been issued with a Certificate of Compliance by the Australian Prudential Regulation Authority.
- (c) "Ordinary-time earnings" means remuneration for an employee's weekly number of hours of work, excluding overtime hours, calculated at the ordinary-time rate of pay, including the following:
  - (i) Monday to Friday shift premiums for ordinary hours of work;
  - (ii) Weekend shift premiums for ordinary hours of work;
  - (iii) Public holiday loadings;
  - (iv) Any percentage addition payable to casual employees for ordinary hours of work;
  - (v) Ordinary time allowances (not including expense related allowances);
  - (vi) Payments made above the base rate for ordinary hours of work.
- (d) "Qualified employee" means:
  - (i) a full-time or part-time employee who has completed at least four weeks service in the industry of nursing. Provided that once this period has elapsed, payments shall be made for the entire period of service with the employer;
  - (ii) a casual employee who has earned in excess of \$450.00 per month. Provided further that any casual employee who is deemed to be a qualified employee prior to 8 July 1997 will continue to be qualified.

### 39.2 Superannuation Legislation

The subject of superannuation is dealt with extensively by federal 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, shall govern the superannuation rights and obligations of the parties.

### 39.3 Contributions

- (a) For qualified employees the employer shall, in respect of each employee, pay a sum equal to the Superannuation Guarantee legislation, as amended from time to time, of the employee's gross ordinary time earnings into a complying fund. Such contributions shall be remitted to the complying fund on a monthly basis. With respect to casual employees, contributions shall be remitted at the time that employees receive their annual group certificates
- (b) An employee may nominate one complying fund to which all Agreement and statutory superannuation contributions shall be paid, subject to employer approval of the fund nominated by the employee. Provided that the employer shall not unreasonably withhold agreement unless it establishes good and proper reasons for the withholding of the agreement.
- (c) Where no such nomination is made before any such contributions become payable, the contributions referred to in this clauses will be paid to the default fund for that place of employment.

### 45.1 Salary Sacrifice to Superannuation

- (a) Salary Sacrifice to Superannuation means the option of making additional superannuation contributions by electing to sacrifice a portion of the gross earnings (pre tax dollars) under the parent awards. This will give the effect of reducing the taxable income by the amount for salary sacrifice.

- (b) Salary sacrifice to superannuation shall be offered to employees by mutual agreement between the employee and employer.
- (c) Such election must be made prior to the commencement of the period of service to which the earnings relate.
- (d) One change of a sacrificed amount will be permitted in an employee's anniversary year, which is 12 months from the date of commencement of employment, without incurring an administration charge (\$50). Changing from full-time to part-time or part-time to full-time employment will not be classified as a change for administration charge purposes.
- (e) The amount sacrificed must not exceed any relevant superannuation guarantee contribution limit.
- (f) The sacrificed portion of salary reduces the salary subject to PAYG Taxation deductions.
- (g) Any allowance, penalty rate, overtime payment for unused leave entitlements, other than any payments for leave taken whilst employed, shall be calculated by reference to the salary which would have applied to the employee in the absence of any salary sacrifice to superannuation. Payment for leave taken whilst employed will be at the post salary sacrificed amount.
- (h) Salary sacrifice arrangements can be cancelled by either the employer or employee at any time provided either party gives one month's notice. The employer has the right to withdraw from offering salary sacrifice to employees without notice if there is any alteration to relevant Australian Taxation legislation.
- (i) Contributions payable by the employer in relation to the Superannuation Guarantee Legislation shall be calculated by reference to the salary which would have applied to the employee under this Agreement in the absence of any salary sacrifice.
- (j) Employers will not use any amount that is salary sacrificed by an employee to negate contributions payable under the Superannuation Guarantee Legislation.
- (k) The employee shall have the portion of payable salary that is sacrificed paid as additional employer superannuation contributions into the same superannuation fund that receives the employer's SGC contributions.

39.4 Nothing in this clause shall affect the right of an employer to maintain alternate arrangements with respect to salary sacrifice for employees.

#### **40. Consultation**

40.1 This term applies if the employer:

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

##### **Major change**

40.2 For a major change referred to in subclause 40.1(a):

- (a) the employer must notify the relevant employees of the decision to introduce the major change; and
- (b) subclauses 40.3 to 40.9 apply.

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

40.4 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.
- 40.5 As soon as practicable after making its decision, the employer must:
- (a) discuss with the relevant employees:
    - (i) the introduction of the change; and
    - (ii) the effect the change is likely to have on the employees; and
    - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
  - (b) for the purposes of the discussion—provide, in writing, to the relevant employees:
    - (i) all relevant information about the change including the nature of the change proposed; and
    - (ii) information about the expected effects of the change on the employees; and
    - (iii) any other matters likely to affect the employees.
- 40.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 40.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 40.8 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 subclause 40.2(a) and subclauses 40.3 and 40.5 are taken not to apply.
- 40.9 In this term, a major change is likely to have a significant effect on employees if it results in:
- (a) the termination of the employment of employees; or
  - (b) major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
  - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
  - (d) the alteration of hours of work; or
  - (e) the need to retrain employees; or
  - (f) the need to relocate employees to another workplace; or
  - (g) the restructuring of jobs.

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

- 40.10 For a change referred to in subclause 40.1(b):
- (a) the employer must notify the relevant employees of the proposed change; and
  - (b) subclauses 40.11 to 40.15 apply.
- 40.11 The relevant employees may appoint a representative for the purposes of the procedures in this term.
- 40.12 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.
- 40.13 As soon as practicable after proposing to introduce the change, the employer must:
- (a) discuss with the relevant employees the introduction of the change; and
  - (b) for the purposes of the discussion—provide to the relevant employees:
    - (i) all relevant information about the change, including the nature of the change; and
    - (ii) information about what the employer reasonably believes will be the effects of the change on the employees; and
    - (iii) information about any other matters that the employer reasonably believes are likely to affect the employees; and
  - (c) invite the relevant employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- 40.14 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 40.15 The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 40.16 In this term: relevant employees means the employees who may be affected by a change referred to in subclause 40.1.

## **41. Redundancy**

### **41.1 Application**

- (a) In accordance with the NES provisions in section 123 of part 2-2 of the Act, the following employees are exempted from this clause:
  - (i) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
  - (ii) an employee whose employment is terminated because of serious misconduct;
  - (iii) a casual employee;
  - (iv) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;
  - (v) an employee prescribed by the regulations as an employee to whom Division 11 of part 2-2 of the Act does not apply.
- (b) Subclause 41.1(a)(i) does not prevent this clause from applying to an employee if a substantial reason for employing the employee as described in that subclause was to avoid the application of this clause.

### **41.2 Discussions Before Terminations**

- (a) Where the employer has made a decision that they no longer wish the job an employee has been doing to be done by anyone and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and their workplace representatives.
- (b) The discussions shall take place as soon as practicable after the employer has made a definite decision which will invoke the provisions of subclause 41.2(a) and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any termination on the employees concerned.

- (c) For the purpose of the discussion the employer shall, as soon as practicable, provide to the employees concerned and if requested by the employee, any nominated employee representative which may be a union representative, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

#### 41.3 Termination of Employment

- (a) Notice for Changes in Production, Programme, Organisation or Structure will be in accordance with Clause 34 – Termination of Employment.

- (b) **Notice for Technological Change –**

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from "technology" in accordance with clause 40.1(a):

- (i) In order to terminate the employment of an employee the employer shall give to the employee three months' notice of termination.
  - (ii) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.
  - (iii) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act 1955, or any Act amending or replacing the Act and Clause 23, Annual Leave and Clause 22, Public Holidays.

- (c) **Time Off During the Notice Period -**

- (i) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice, to a maximum of five weeks, for the purpose of seeking other employment.
  - (ii) 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 an interview or the employee shall not receive payment for the time absent.

- (d) **Employee Leaving During the Notice Period –**

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstance the employee shall not be entitled to payment in lieu of notice.

- (e) **Statement of Employment –**

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or the type of work performed by the employee.

- (f) **Notice to Centrelink –**

Where a decision has been made to terminate the employment of employees, the employer shall notify Centrelink thereof 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.

- (g) **Centrelink Employment Separation Certificate –**

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

(h) **Transfer to Lower Paid Duties –**

Where an employee agrees to be transferred to lower paid duties, for reasons set out in subclause 41.2 Discussions before terminations the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the employer may at the employer's option make payment in lieu thereof of an amount equal to the difference between the former ordinary-time rate of pay and the new ordinary-time rate for the number of weeks' notice still owing.

**41.4 Severance Pay**

(a) Where the employment of a permanent employee is to be terminated, the employer shall pay the following severance pay in respect of a continuous period of service.

(i) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

<u>Years of Service</u>	<u>Entitlement</u>
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

(ii) Where an employee is 45 years of age or over, the entitlement shall be in accordance with the following scale:

<u>Years of Service</u>	<u>Entitlement</u>
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years	8.75 weeks
3 years and less than 4 years	12.5 weeks
4 years and less than 5 years	15 weeks
5 years and less than 6 years	17.5 weeks
6 years and over	20 weeks

(iii) "Week's pay" means the all-purpose rate of pay for the employee concerned at the date of termination. For the purposes of this clause, in addition to the ordinary rate of pay and over-agreement payments, all allowances, penalties or shift payment to which the nurse would be entitled shall form part of an employee's "week's pay". For the purpose of this subclause the following allowances in Clause 12, Special Allowances shall form part of the employee's "week's pay": subclauses 12.1(a); 12.1(b); 12.1(c); 12.2(a); and 12.2(c).

(iv) A "week's pay" for a particular employee shall be determined according to the average week's pay received by the employee in the period immediately prior to their last date of employment equal to the number of weeks of severance pay to which the employee is entitled under subclauses 41.4(a) and 41.4(b).

(v) The employer shall also pay the following amounts to any employee terminated pursuant to this clause:

- A. pro rata long service leave;
- B. accrued annual leave;
- C. annual Leave loading to which the employee is entitled; and
- D. untaken accumulated ADOs, at ordinary rates.

(b) Incapacity to Pay – refer to section 120 of the Act

- (i) Subject to an application by the employer and further order of the FWC, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclauses 41.4(a) and 41.4(b).
- (ii) The FWC shall have regard to such financial and other resources of the employer concerned as the FWC thinks relevant, and the probable effect paying the amount of severance pay in subclause 41.4(a) will have on the employer.
- (c) Alternative Employment – refer to section 120 of the Act

Subject to an application by the employer and further order of the FWC, an employer may pay a lesser amount (or no amount) of severance pay than that contained in subclause 41.4(a) if the employer obtains acceptable alternative employment for an employee.

#### **41.5 Grievance Procedure**

Refer to Clause 36, Resolution of Disputes contained in this Agreement.

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

- 42.1 It is the intention of this Agreement that the (NES) as it may be varied from time to time shall apply to the employees the subject of this Agreement. Any provisions of the NES that are also referred to or set out in this Agreement are for the assistance of the parties.
- 42.2 Where the NES provides, or is varied to provide, a condition or entitlement more favourable to the employee in a particular respect than that set out in this Agreement, the better entitlement will apply.
- 42.3 The minimum guarantees provided by the NES will override less favourable provisions in this Agreement.

### **43. Natural Disaster Leave**

- 43.1 Natural Disaster Leave is paid leave for employees who are affected directly and personally by declared natural disasters such as floods and bush fires and consequently are unable to attend the workplace.
- 43.2 Permanent employees who are prevented from attending work due to attending work due to a natural disaster are entitled to up to one (1) day paid leave per occasion at ordinary pay for the shift they would otherwise have worked on that day.
- 43.3 Any further leave required may be taken from the employee's annual leave or, if agreed, it may be taken as approved unpaid leave
- 43.4 Natural Disaster Leave is not cumulative
- 43.5 **Notice and evidence requirements**
  - (a) to be entitled to paid leave under this clause, employees must give notice to their manager of their request to take Natural Disaster Leave as soon as reasonably practicable ( which may be at a time before or after the leave has started) that the employee is ( or will be) absent from their employment.
  - (b) employees may be required to provide their manager with reasonable evidence to support their application to access Natural Disaster Leave. Such evidence may include, but is not limited to, confirmation an event has been gazetted as a natural disaster or confirmation from a regulatory body such as Roads and Maritime Services or State Emergency Service.



#### **44. Agreement Flexibility**

- 44.1 An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
- (a) the agreement deals with 1 or more of the following matters:
    - (i) arrangements about when work is performed in relation to the timing of breaks and time off in lieu of overtime;
    - (ii) the simplification of allowances and the inclusion of allowances in base salary; and
    - (iii) the inclusion of leave loading in base salary.
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in subclause 44.1(a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
- 44.2 The employer must ensure that the terms of the individual flexibility arrangement:
- (a) are about permitted matters under section 172 of the Fair Work Act 2009; and
  - (b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
  - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- 44.3 The employer must ensure that the individual flexibility arrangement:
- (a) is in writing; and
  - (b) includes the name of the employer and employee; and
  - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
  - (d) includes details of:
    - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
    - (ii) how the arrangement will vary the effect of the terms; and
    - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
  - (e) states the day on which the arrangement commences.
- 44.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- 44.5 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

#### **45. Workload management**

- 45.1 The parties to this agreement acknowledge that employees and management have a responsibility to maintain a balanced workload and recognise the adverse effects that excessive workloads may have on employee/s and the quality of resident/client care.
- 45.2 The employer will use best endeavours to replace known staff absences (eg. annual or long service leave) with the same classification and experience level.
- 45.3 To ensure that employee concerns involving excessive workloads are effectively dealt with by Management the following procedures should be applied:

- (a) In the first instance, employee/s should discuss the issue with their immediate supervisor and, where appropriate, explore solutions.
- (b) If a solution cannot be identified and implemented, the matter should be referred to an appropriate senior manager for further discussion.
- (c) If a solution still cannot be identified and implemented, the matter should be referred to the Director of Nursing (DON) for further discussion. The DON will respond within a further 72 hours.
- (d) The outcome of the discussions at each level and any proposed solutions should be recorded in writing and fed back to the effected employees.

45.4 Where agreement cannot be reached, the parties may exercise their rights pursuant to Clause 36, Resolution of Disputes.

#### **46. Access to Copies of the Agreement and the NES**

Where practicable, a copy of this Agreement and the NES will be made readily accessible to staff at each workplace covered by the Agreement. In all cases a copy of both documents will be available for inspection through the person responsible for personnel matters at the workplace.

#### **47. Study Leave**

- 47.1 South Pacific Private Hospital is committed to providing and supporting training and educational opportunities to ensure that employees are able to meet South Pacific Private Hospital's best practice objectives.
- 47.2 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.
- 47.3 Consistent with the above, employees are entitled to two (2) days paid study leave for courses related to work, approved by South Pacific Private Hospital. Such leave is not applicable to Casual Employees, will not accrue year to year and will be pro-rated for Part-Time Employees.
- 47.4 Approval by the manager for study leave must be granted prior to the employee registering for formal courses of study, conferences or seminars.

#### **48. Qualification Allowance**

- 48.1 The provision of this clause including the payment of allowances prescribed in this clause shall apply from the first pay period on or after the date of certification. The allowances contained in this clause, are considered as wage related allowances and will be increased in the same manner as wages. Appropriate qualifications or their equivalent attracting this allowances are found in Table 3 of this Agreement. The payment of all allowances in this Clause is subject to the conditions stated below in subclauses 48.2(a) to (e)
- 48.2 An employee employed in the classification of Registered Nurse (years 1 to 8), Clinical Nurse Specialist, Clinical Nurse Educator who holds a qualification in a clinical field, in addition to the qualification leading to registration, shall be paid a skills allowance, subject to the following conditions set out below:
  - (a) the allowance is only payable where the qualification is accepted by the employer to be directly relevant to the competency and skills used by the nurse in the duties of the position. The employer shall review eligibility of the allowance annually.
  - (b) an employee holding more than one relevant qualification is only entitled to one allowance, being the allowance of the highest monetary value;
  - (c) the employee claiming entitlement to a qualification allowance must provide evidence to the employer that they hold that qualification;

- (d) where an employee works part time the allowance will be paid on a pro rata basis on the contracted hours.
- (e) Where an employees' works as a casual this allowance shall not apply.

48.3 Subject to the provisions in subclause 48.2 an employee who holds:

- (a) a post-graduate certificate or post graduate diploma shall be paid an allowance \$25.00 per week.
- (b) a degree (other than an undergraduate nursing degree) shall be paid an allowance \$30.00 per week.
- (c) a masters degree or doctorate shall be paid an allowance \$50.00 per week.

48.4 An enrolled nurse who holds an Advanced Diploma of Nursing (Enrolled/Division 2 Nursing) qualification shall be paid an allowance \$25.00 per week.

48.5 The above allowances are not to be included in the employee's ordinary rate of pay. The allowances are payable during periods of paid leave taken by an employee.

## 49. Union Rights

49.1 The employer recognises the role of the Union and its delegates and representatives and encourages their involvement within the workplace.

49.2 Noticeboard – the employer agrees to the affixing of a Union noticeboard in the staff lunch room and for it to remain accessible during the life of this Agreement

## 50. Community Service Leave

50.1 Employees are entitled to Community Service Leave in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 8 of the Act).

### 50.2 Entitlement to be absent from employment for engaging in eligible community service activity

- (a) An employee who engages in an eligible community service activity is entitled to be absent from his or her employment for a period if:
  - (i) the period consists of one or more of the following:
    - A. time when the employee engages in the activity;
    - B. reasonable travelling time associated with the activity;
    - C. reasonable rest time immediately following the activity; and
  - (ii) unless the activity is jury service—the employee's absence is reasonable in all the circumstances.

### 50.3 Meaning of *eligible community service activity*

- (a) Each of the following is an ***eligible community service activity***:
  - (i) jury service (including attendance for jury selection) that is required by or under a law of the Commonwealth, a State or a Territory; or
  - (ii) a voluntary emergency management activity (see 47.2 (2)); or
  - (iii) an activity prescribed as an eligible community activity by regulations made in accordance with section 109 (4) of the Fair Work Act 2009
- (b) An employee engages in a ***voluntary emergency management activity*** if, and only if:
  - (i) the employee engages in an activity that involves dealing with an emergency or natural disaster; and

- (ii) the employee engages in the activity on a voluntary basis (whether or not the employee directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
  - (iii) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
  - (iv) either:
    - A. the employee was requested by or on behalf of the body to engage in the activity; or
    - B. no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
- (c) A **recognised emergency management body** is:
- (i) a body, or part of a body, that has a role or function under a plan that:
    - A. is for coping with emergencies and/or disasters; and
    - B. is prepared by the Commonwealth, a State or a Territory; or
  - (ii) a fire-fighting, civil defence or rescue body, or part of such a body; or
  - (iii) any other body, or part of a body, a substantial purpose of which involves:
    - A. securing the safety of persons or animals in an emergency or natural disaster; or
    - B. protecting property in an emergency or natural disaster; or
    - C. otherwise responding to an emergency or natural disaster; or
  - (iv) a body, or part of a body, prescribed by the regulations made in accordance with the Fair Work Act 2009;
- but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this clause.

#### 50.4 Notice and evidence requirements

- (a) An employee who wants an absence from his or her employment to be covered by this clause must give his or her employer notice of the absence.
- (b) The notice:
  - (i) must be given to the employer as soon as practicable (which may be a time after the absence has started); and
  - (ii) must advise the employer of the period, or expected period, of the absence.
- (c) An employee who has given his or her employer notice of an absence under clause 50.4(a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.
- (d) An employee's absence from his or her employment is not covered by clause 53 unless the employee complies with subclause 50.4.

#### 50.5 Payment to employees (other than casuals) on jury service

- (a) This section applies if:
  - (i) in accordance with clause 50, an employee is absent from his or her employment for a period because of jury service; and
  - (ii) the employee is not a casual employee.

- (b) Subject to subclauses 50.5(c), (d) and (e), the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
- (c) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:
  - (i) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and
  - (ii) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.
- (d) If, the employer requires the employee to provide evidence in accordance with 50.5(c):
  - (i) the employee is not entitled to payment under 53.5(b) unless the employee provides the evidence; and
  - (ii) if the employee provides the evidence—the amount payable to the employee under 50.5(b) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.
- (e) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:
  - (i) the employer is only required to pay the employee for the first 10 days of absence; and
  - (ii) the evidence provided in response to a requirement under subsection (3) need only relate to the first 10 days of absence; and
  - (iii) the reference in 50.5(d) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.
- (f) **Jury service pay** means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.
- (g) **Jury service summons** means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

## 51. Ceremonial Leave

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

## 52. Requests for Flexible Working Arrangements

- 52.1 Employees are entitled to request flexible employment arrangements in accordance with the provisions of the NES (refer to Chapter 2, Part 2-2, Division 4 of the Act)
- 52.2 An employee may request a change in their working arrangements, including changes in: the hours of work; patterns of work; and location of work, if they require flexibility because they:
  - (a) are the parent, or have responsibility for the care of a child who is of school age or younger
  - (b) are a carer (within the meaning of the *Carer Recognition Act 2010*)
  - (c) have a disability
  - (d) are 55 or older
  - (e) are experiencing violence from a member of their family; or
  - (f) provide care or support to a member of their immediate family or household, who requires care or support because the member is experiencing violence from the members family.
- 52.3 To avoid doubt, and without limiting subclause 52.2, and employee who:

- (a) is a parent, or has responsibility for the care, of a child; and
  - (b) is returning to work after taking leave in relation to the birth or adoption of the child;
- may request to work part-time to assist the employee to care for the child

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

- (a) for an employee other than a casual employee, the employee has completed at least 12 months of continuous service with the Employer immediately before making the request; or
- (b) for a casual employee, the employee:
  - (i) is a long term casual employee of the Employer immediately before making the request; and
  - (ii) has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

52.5 The request must:

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

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

### 53. Leave to deal with Family and Domestic Violence

53.1 This clause applies to all employees, including casuals.

53.2 Definitions

(a) In this clause:

**family and domestic violence** means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

**family member** means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
- (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

(b) A reference to a spouse or de facto partner in the definition of family member in subclause 53.2(a) includes a former spouse or de facto partner.

53.3 Entitlement to paid leave

An employee (excluding casuals) is entitled to 3 days' paid leave to deal with family and domestic violence, as follows:

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
- (b) the leave does not accumulate from year to year; and
- (c) is available in full to part-time and casual employees.

Note: 1. A period of paid leave to deal with family and domestic violence may be taken as consecutive or single days or as a fraction of a day.

2. The reasons for which an employee may take paid leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

3. The employee's other leave balances are not to be taken into account when providing this type of leave.

#### 53.4 Entitlement to unpaid leave

53.5 Once the paid leave provided in clause 53.3 is exhausted, an An employee (including casuals) may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

#### 53.6 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

#### 53.7 Notice and evidence requirements

##### (a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 53. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

##### (b) Evidence

An employee who has given their employer notice of the taking of leave under clause 53 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in subclause 53.4.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

#### 53.8 Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under subclause 53.6 is treated confidentially, as far as it is reasonably practicable to do so.
- (b) Nothing in clause 57 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

#### 53.9 Compliance

An employee is not entitled to take leave under clause 53 unless the employee complies with clause 53.



**Part B Table 1 - Monetary Rates**

<b>Classification</b>	<b>Current Weekly Rates</b>	<b>FFPP on or after 1/07/2018 2.0%</b>	<b>FFPP on or after 1/07/2019 2.1%</b>	<b>FFPP on or after 1/07/2020 2.1%</b>
<b>AIN &amp; Trainee EN</b>				
First year of experience	\$803.33	\$819.40	\$836.61	\$854.18
Second year of experience	\$827.11	\$843.65	\$861.37	\$879.46
Third year of experience	\$851.34	\$868.37	\$886.61	\$905.23
Thereafter	\$876.50	\$894.03	\$912.80	\$931.97
<b>Enrolled Nurse - with noration</b>				
First year of experience	\$988.07	\$1,007.83	\$1,028.99	\$1,050.60
Second year of experience	\$1,009.74	\$1,029.93	\$1,051.56	\$1,073.64
Third year of experience	\$1,031.75	\$1,052.39	\$1,074.49	\$1,097.05
Fourth year of experience	\$1,053.65	\$1,074.72	\$1,097.29	\$1,120.33
Thereafter	\$1,075.43	\$1,096.94	\$1,119.98	\$1,143.50
<b>Enrolled Nurse</b>				
First year of experience	\$1,007.93	\$1,028.09	\$1,049.68	\$1,071.72
Second year of experience	\$1,030.07	\$1,050.67	\$1,072.73	\$1,095.26
Third year of experience	\$1,052.21	\$1,073.25	\$1,095.79	\$1,118.80
Fourth year of experience	\$1,074.58	\$1,096.07	\$1,119.09	\$1,142.59
Thereafter	\$1,096.97	\$1,118.91	\$1,142.41	\$1,166.40
<b>Registered Nurse / Midwife</b>				
First year of experience	\$1,120.43	\$1,142.84	\$1,166.84	\$1,191.34
Second year of experience	\$1,181.44	\$1,205.07	\$1,230.38	\$1,256.22
Third year of experience	\$1,242.43	\$1,267.28	\$1,293.89	\$1,321.06
Fourth year of experience	\$1,307.65	\$1,333.80	\$1,361.81	\$1,390.41
Fifth year of service	\$1,372.38	\$1,399.83	\$1,429.23	\$1,459.24
Sixth year of service	\$1,437.48	\$1,466.23	\$1,497.02	\$1,528.46
Seventh year of service	\$1,511.23	\$1,541.45	\$1,573.82	\$1,606.87
Eighth year of service	\$1,573.56	\$1,605.03	\$1,638.74	\$1,673.15
<b>Clinical Nurse Specialist</b>				
	\$1,637.57	\$1,670.32	\$1,705.40	\$1,741.21
<b>Clinical Nurse Educator</b>				
	\$1,837.75	\$1,874.51	\$1,913.87	\$1,954.06
<b>Clinical Nurse Consultant</b>				
	\$2,013.45	\$2,053.72	\$2,096.85	\$2,140.88
<b>Nursing/Midwifery Unit Manager -</b>				
Level I	\$1,973.86	\$2,013.34	\$2,055.62	\$2,098.79
Level II	\$2,067.47	\$2,108.82	\$2,153.11	\$2,198.33
Level III	\$2,122.95	\$2,165.41	\$2,210.88	\$2,257.31
<b>Director of Nursing</b>				
	\$2,305.00	\$2,351.10	\$2,400.47	\$2,450.88

**Part B Table 2 – Allowances**

<b>Item No.</b>	<b>Clause No.</b>	<b>Brief Description</b>	<b>Current Rates</b>	<b>FFPP on or after 1/07/2018</b>	<b>FFPP on or after 1/07/2019</b>	<b>FFPP on or after 1/07/2020</b>
1	12.1(a)	In charge of hospital	\$26.77	<b>27.31</b>	<b>27.88</b>	<b>28.47</b>
2	12.1(b)	In charge of ward/unit in absence of NUM	\$25.04	<b>25.54</b>	<b>26.08</b>	<b>26.63</b>
3	12.1(c)	In charge of ward/unit & hospital	\$37.55	<b>38.3</b>	<b>39.1</b>	<b>39.92</b>
4	12.2(a)	On call	\$22.52	<b>22.97</b>	<b>23.45</b>	<b>23.94</b>
5	12.2(b)	On call on rostered days off	\$47.65	<b>48.6</b>	<b>49.62</b>	<b>50.66</b>
6	12.2(c)	On call during meal break	\$13.57	<b>13.84</b>	<b>14.13</b>	<b>14.43</b>
7	16.3(a)	Uniforms	\$7.11	<b>7.25</b>	<b>7.4</b>	<b>7.56</b>
8	16.3(a)	Shoes	\$2.19	<b>2.23</b>	<b>2.28</b>	<b>2.33</b>
9	16.3(b)	Stockings	\$3.68	<b>3.75</b>	<b>3.83</b>	<b>3.91</b>
10	16.3(c)	Cardigan or jacket	\$2.15	<b>2.19</b>	<b>2.24</b>	<b>2.29</b>
11	16.3(d)	Laundry	\$5.93	<b>6.05</b>	<b>6.18</b>	<b>6.31</b>
12	16.3(f)	Socks	\$0.73	<b>0.74</b>	<b>0.76</b>	<b>0.78</b>
13	18.1	Meal on overtime	\$19.44	<b>19.83</b>	<b>20.25</b>	<b>20.68</b>
15	28.3	Breakfast	\$3.96	<b>4.04</b>	<b>4.12</b>	<b>4.21</b>
15	28.3	Other meals	\$7.20	<b>7.34</b>	<b>7.49</b>	<b>7.65</b>

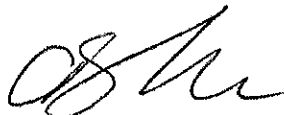
NB: FFPP means the first full pay period



Signature Page for

South Pacific Private and NSWNMA - ANMF NSW Branch

Enterprise Agreement 2018 - 2020



Claire Barber

Chief Executive Officer

24 Beach St

CURL CURL NSW 2096

Witness Name: SIMON HOWELL

Witness Address: 103/100 CLEVELAND STREET  
CHIPPENDALE

Date 18/12/18

As the Chief Executive Officer, Ms Barber is authorized to sign this Agreement on behalf of the employer.

DOCTOR

MED 000/1 70 6 22

*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.*