



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

**Trustee of the Sisters of Our Lady of China Health Care Pty Ltd T/A
Peakhurst Nursing Home**
(AG2021/6910)

THE SISTERS OF OUR LADY OF CHINA PEAKHURST NURSING HOME, NSWNMA AND HSU NEW SOUTH WALES BRANCH ENTERPRISE AGREEMENT 2020

Aged care industry

COMMISSIONER MATHESON

SYDNEY, 8 OCTOBER 2021

*Application for approval of The Sisters of Our Lady of China Peakhurst Nursing Home,
NSWNMA and HSU New South Wales Branch Enterprise Agreement 2020.*

[1] An application has been made for approval of an enterprise agreement known as *The Sisters of Our Lady of China Peakhurst Nursing Home, NSWNMA and HSU New South Wales Branch Enterprise Agreement 2020* (**Agreement**). The application was made by Trustee of the Sisters of Our Lady of China Health Care Pty Ltd (**Applicant**) pursuant to s.185 of the *Fair Work Act 2009* (Cth) (**Act**). The Agreement is a single enterprise agreement.

[2] Clause 4 of the Agreement names the employer as ‘The Sisters of Our Lady of China Health Care Pty Ltd’. The name of the Applicant is ‘Trustee of the Sisters of Our Lady of China T/A Peakhurst Nursing Home’. The Applicant confirmed that the name of the employer in the Agreement was an error and applied for a correction pursuant to s.586 of the Act so that:

(a) The definition of ‘Employer’ in Clause 3.2 of the Agreement states ‘Employer means Trustee of the Sisters of Our Lady of China T/A Peakhurst Nursing Home and has the meaning in the Act’.

(b) Clause 4.1(a) of the Agreement states ‘Trustee of the Sisters of Our Lady of China T/A Peakhurst Nursing Home (“the Employer”)’.

[3] I am satisfied that this amendment should be allowed and that it is appropriate to do so pursuant to s.586 of the Act. I make the amendment.

[4] Clause 12.3(b) of the Agreement contains an apparent error stating:

‘Before commencing part-time employment, the Employer and Employee will agree in writing the guaranteed minimum number of hours to be worked **hours to be worked** and the days of the week and shifts that will be worked’ (emphasis added).

[5] The Applicant applied for a correction seeking that the Commission exercise its powers pursuant to s.586 of the Act so that the clause reads:

‘Before commencing part-time employment, the Employer and Employee will agree in writing the guaranteed minimum number of hours to be worked and the days of the week and shifts that will be worked’.

[6] I am satisfied that this amendment should be allowed and that it is appropriate to do so pursuant to s.586 of the Act. I make the amendment.

[7] Clause 38.1 of the Agreement prescribes shift penalties. The table in clause 38.1(a) contains the words:

‘Afternoon shift commencing **after** 10.00 a.m. and before 1:00 p.m’ (emphasis added).

[8] The Applicant applied for a correction seeking that the Commission exercise its powers pursuant to s.586 of the Act so that the clause reads:

‘Afternoon shift commencing at 10.00 a.m. and before 1:00 p.m’.

[9] I am satisfied that this amendment should be allowed and that it is appropriate to do so pursuant to s.586 of the Act. I make the amendment.

[10] I observe that certain provisions of the Agreement may be inconsistent with the National Employment Standards (NES). However, noting clause 6.2 of the Agreement, I am satisfied that the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[11] The Employer has provided written undertakings. A copy of the undertakings is attached at Annexure A of this decision (**Undertakings**). I am satisfied that the effect of accepting the Undertakings is not likely to:

- (a) cause financial detriment to any employee covered by the Agreement; or
- (b) result in substantial changes to the Agreement.

[12] Pursuant to s.190(3) of the Act, I accept the Undertakings.

[13] Subject to the Undertakings, and on the basis of the materials before the Commission, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 of the Act as are relevant to the application for approval of the Agreement have been met.

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

[15] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 15 October 2021. The nominal expiry date of the Agreement is 30 June 2024.



COMMISSIONER

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No:
AG2021/6910

Applicant: **The Sisters of Our Lady of China Peakhurst Nursing Home**

Section 185 – Application for approval of a single enterprise agreement

Undertaking – Section 190

I, Joseph Zhou, have the authority given to me by **The Sisters of Our Lady of China Peakhurst Nursing Home** to give the following undertakings with respect to the **The Sisters of Our Lady of China Peakhurst Nursing Home, NSWNMA and HSU New South Wales Branch Enterprise Agreement 2020 Enterprise Agreement 2020** ("the Agreement"):

1. Amend Clause 12.3 (b) to read:
 - a. *Before commencing part-time employment, the Employer and Employee will agree in writing the guaranteed minimum number of hours to be worked and the days of the week and shifts that will be worked. For all Employees except those employed in nursing classifications, the agreement will also include the starting and finishing times each day"*

2. Amend Clause 36.1(d) to read:
 - a. *Where a Home Care Employee is required to have a meal with a client or clients as a part of the normal work routine or client program, the meal period referred to in clause 36.1(d) of the Agreement is to be counted as time worked'.*

3. Amend Clause 40.7(a) to read:
 - (i) *In addition to their ordinary pay, an Employee, other than a shiftworker, will be paid annual leave loading of 17.5% of their ordinary pay ~~on a~~ maximum of 152 hours/four weeks annual leave per annum.'*

4. Amend Clause E.4.2 of the Agreement to read:

E.4.2 Provided that the minimum amount payable must be not less than \$90 per week.

5. Amend Clause 12.5 of the Agreement to read:
 - (c) Casual Employees will be paid the following minimum hours for each engagement:
 - (i) Home care Employees 1 hour

(ii) Health Professionals 3 hours

(iii) All other Employees 2 hours

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



Signature

04/10/2021

Date