



DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

**Calvary Health Care Tasmania Limited T/A Calvary Health Care
Tasmania**
(AG2023/5446)

**CALVARY HEALTH CARE – TASMANIA PRIVATE HOSPITALS –
NURSES AND MIDWIVES ENTERPRISE AGREEMENT 2022**

Health and welfare services

COMMISSIONER YILMAZ

MELBOURNE, 7 MARCH 2024

Application for approval of the Calvary Health Care – Tasmania Private Hospitals – Nurses and Midwives Enterprise Agreement 2022

[1] An application has been made for approval of an enterprise agreement known as the *Calvary Health Care – Tasmania Private Hospitals – Nurses and Midwives Enterprise Agreement 2022* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Calvary Health Care Tasmania Limited T/A Calvary Health Care Tasmania (the Applicant). The Agreement is a single enterprise agreement.

[2] The Australian Nursing and Midwifery Federation Tasmanian Branch (ANMF) and Health Services Union, Tasmania Branch T/A Health and Community Services Union (HACSU) are union bargaining representatives. In the Form F18A the HACSU advised the Commission that they do not support approval of the Agreement and contend that the Agreement contravenes the National Employment Standards (NES) and has significant less beneficial terms. Despite correspondence between the parties and a conciliation conference on 8 February 2024, the HACSU pressed its objections and the ANMF supported the submissions made by the HACSU. Parties were required to file written submissions and this decision is made on the papers.

[3] The objections raised by the HACSU and supported by the ANMF concern the following clauses in the Agreement:

- Clause 37(l) - the employer's ability to direct an employee to take annual leave;
- Clause 37(a)(ii)(1) – shift workers additional leave entitlements; and
- Various clauses that are less beneficial in terms of the better off overall test.

Clause 37(l) - the employer's ability to direct an employee to take annual leave

[4] The HACSU objects to the proposed clause contending that it is:

- Inconsistent with s.93(3) of the Act on the basis that s.93(3) only allows an enterprise agreement to include a term requiring an employee to take annual leave “*only if the requirement is reasonable.*”
- Inconsistent with the Explanatory Memorandum¹ which discussed relevant considerations in assessing reasonableness.
- Despite the Applicant relying on custom and practice and even though the clause is unchanged from the current agreement, the Applicant’s custom to reach agreement with employees is more akin to s.88 of the NES rather than utilisation of the mechanism contained in clause 37(I).
- The drafting of the clause is too broad by allowing a shutdown over a 6 week period.
- The clause permits an “unfettered right” to provide 1 week notice in “*unforeseen and pressing circumstances*” and avoids consultation and redeployment requirements.
- Section 55 of the Act prohibits an enterprise agreement from excluding the full benefit of a NES.
- The clause is contrary to Parliament’s intention to allow for shutdown periods. The clause allows for reduced rosters, poorly defines the shutdown period and is contrary to s.93(3) by allowing for partial shutdown which is inconsistent with the Act.
- The clause is less beneficial than the Nurses Award 2020 as shutdown provisions in the Award only apply to medical practices and not hospitals.²

[5] The Applicant contends that s.93(3) contemplates that there may be circumstances prescribed in an enterprise agreement where an employee may be required to take periods of annual leave, subject to the requirement being reasonable. It submits that in assessing reasonableness, the Explanatory Memorandum provides a non-exhaustive list of relevant considerations. The Applicant relies on the principles contained in the Full Bench *4 Yearly Review of Modern Awards – Plain Language – Shutdown Provisions*,³ and submits that its Agreement clause addresses the circumstances of the enterprise which is consistent with the principles. Not only does the Applicant contend that the clause meets the requirements of s.93(3) of the Act, but the clause also takes into consideration the “prevailing circumstances of the Applicant and its employees, the long standing and accepted practices in the workplace, provides for the necessary limitations and safeguards regarding direction to take leave and therefore the provisions of the clause are reasonable.”⁴

[6] The clause in dispute is the following:

‘37. ANNUAL LEAVE

(I) Annual leave during close down periods

(i) It is noted that the last week of December and the month of January are times of less activity for the Employer, thereby resulting in a

¹ *Fair Work Bill 2008* Explanatory Memorandum at [382].

² HACSU written submissions [3] – [9].

³ [2022] FWCFB 246.

⁴ Applicant’s written submissions [22] - [30].

shut-down or partial shutdown, of certain areas and a significant curtailment of services in other areas at the Employer's hospitals.

- (ii) Management will consult with staff a minimum of 8 weeks beforehand concerning changes to rosters and redeployment options (as set out at subclause (iii)) or the use of leave, over the period(s) set out at (i) above, bearing in mind the operational requirements of the hospitals.
- (iii) Where there are no redeployment options, management reserves the right to direct employees to utilise up to two weeks (up to 3 weeks in the case of St James ward only) of their accrued leave entitlement over the period(s) set out at (i) of this clause, provided that such direction is reasonable.
- (iv) Where an Employee does not have sufficient accrued annual leave for these period(s), the Employee may be required to take annual leave in advance where such requirement is reasonable. Alternatively, Employees may elect to take leave without pay for all or part of the shut-down period(s). Additionally, employees may utilise banked time in lieu of overtime and accrued days off for all or part of the shutdown period(s).
- (v) Notwithstanding the provisions at Clause 37(d), the provisions set out for the Annual leave during close down periods provision will apply. Nothing in this clause prevents an Employee from being on call during the close-down period(s) where mutually agreed between the Employer and the Employee.
- (vi) Notwithstanding the provisions set out at subclause (i) and (ii) above, in unforeseen and pressing circumstances, periods of less activity for the Employer may arise --resulting in shutdowns or partial shutdowns. The minimum 8 week consultation period set out at subclause (ii) will be reduced to one week for shutdowns (or partial shutdowns) which are as a result of circumstances beyond the Employer's control, including but not limited to Government health directives or other state of emergency directives.'

[7] The clause concerns the taking of annual leave during close down periods. In particular the clause identifies the last week of December and the month of January to be shut down or partially shut down for operational reasons in certain areas of the hospital or due to the curtailment of services. Subclause (ii) provides a minimum consultation period of 8 weeks before any change to rosters, redeployment, or the use of leave can apply. Subclause (iii) provides the right to direct employees to take accrued (paid) leave of 2 weeks (or 3 weeks in St James Ward only) over the shut down period provided the direction is reasonable and there are no redeployment options. Subclause (iv) concerns alternative options where an employee does not have sufficient accrued leave such as leave in advance, banked time in lieu of overtime, accrued days off and leave without pay. Subclause (vi) provides an exemption to the 8 week consultation period where shutdowns or partial shutdowns with one week notice due to

circumstances beyond the employer's control. I observe that the contested clause is unaltered from the clause in place in the current agreement.

[8] The NES are minimum standards of employment⁵ and provide a safety net that underpins the clauses of enterprise agreements.

[9] Section 55 of the Act describes the interaction between the NES, modern awards and enterprise agreements. It is clear that an enterprise agreement must not exclude the NES or any provision of the NES.⁶ An enterprise agreement may include terms that are ancillary, incidental to the operation of the entitlement of an employee under the NES or supplement the NES.⁷ Terms of an agreement may also contain the same terms as the NES⁸ and any terms that contravene s.55 have no effect.⁹

[10] Section 61 in Part 2-2 which identifies the national employment standards and makes clear that the standards apply to all employees and that they “cannot be displaced, even if an enterprise agreement includes terms of the kind referred to in subsection 55(5).”

[11] Division 6 concerns standards relating to annual leave. Section 93 of Division 6 provides that an enterprise agreement may include terms relating to cashing out and taking annual leave. Section 93(3) allows an enterprise agreement to “include terms requiring an employee, or allowing for an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable. Further an “enterprise agreement may include terms otherwise dealing with the taking of paid annual leave.”¹⁰ Clause 37(1) concerns an employer's ability to direct an employee to take paid annual leave in circumstances requiring shut down or partial shutdown. Therefore ss.93(3) and (4) are relevant to the operation of clause 37(1), notably that the requirements directing the taking of leave must be reasonable.

[12] I further observe that the Agreement at clause 6 contains a NES precedence clause. This clause satisfactorily provides that where the NES in the Act is more favourable to the Agreement term regarding matters under the NES, then the NES prevails in respect to those conditions and the Agreement term has no effect.

[13] In the *4 Yearly Review of Modern Awards – Plain language- Shutdown provisions*¹¹(4 yearly review) a Full Bench was constituted to deal with matters in respect to shutdown terms. In consideration of the legislative framework the Bench discussed both s.93(3) of the Act and the guidance regarding the intention of s.93(3) of the Act as provided in the Explanatory Memorandum to the *Fair Work Bill 2008* when determining if a requirement is “reasonable.” The 4 yearly review's primary focus was on a model term for modern awards however, some of the observations from the proceedings are relevant and helpful in this matter.

[14] While the historical review of award clauses identified key characteristics in award terms, it was observed that the terms of a shutdown clause varied depending on the patterns of

⁵ Sections 43 and 44 *Fair Work Act 2009*.

⁶ *Ibid* section 55(1).

⁷ *Ibid* section 55(4).

⁸ *Ibid* section 55(5).

⁹ *Ibid* section 56.

¹⁰ *Ibid* section 93(4).

¹¹ [2022] FWCFB 161 (25 August 2022) and [2022] FWCFB 246 (22 December 2022).

work, production and practice in industries including the safeguards that address the circumstances allowing for shutdown, periods of shutdown and treatment of annual leave entitlements. The Bench expressed the preference for a model clause to be adapted in individual awards to incorporate existing prescriptions but did not propose to regulate shutdowns other than determining that shutdowns must be *temporary* and directions must be reasonable to ensure the clause cannot be abused.¹² Clearly the Bench contemplated that shutdowns may encompass all or part of an operation for a particular period(s). The Full Bench in the December decision¹³ determined it was not persuaded to depart from its provisional conclusions in the August decision.

[15] Of further relevance to this matter is the reference to the Explanatory Memorandum; the Full Bench observed that shutdown provisions are often found in annual leave clauses and thus the terms may be considered “incidental to or necessary for the practical operation of terms concerning the circumstances in which annual leave may be taken or may be required to be taken (...operating in conjunction with s.93(3)...). It may be noted in this connection that the Explanatory Memorandum for the *Fair Work Bill 2008* contemplated that an award might deal with annual shutdowns as an incident of a provision concerned with the taking of annual leave made pursuant to s.93(3).”¹⁴ Section 93(3) also applies to enterprise agreements.

[16] The HACSU makes two points in relation to the shutdown provisions; first that the 6 week period is too broad and secondly that the clause is contrary to Parliament’s intention to allow for shutdown periods. The HACSU submits that the clause allows for reduced rosters, a poorly defined shutdown period and the clause is contrary to s.93(3) by allowing for partial shutdown.

[17] The first observation to make is that the Act does not deal with shutdowns. Section 93(3) allows terms in an enterprise agreement requiring an employee, or allowing for an employee, to be required to take annual leave in particular circumstances, “but only if the requirement is reasonable”. The Explanatory Memorandum clearly contemplates shutdowns as a situation where the employee may be required to take leave. However, for the purpose of s.93(3) there are additional considerations to assess reasonableness of a direction to take leave as were contemplated by the list in the Explanatory Memorandum. The reference to shutdown over the Christmas/ New Year period in the Explanatory Memorandum¹⁵ is neither a prescriptive description of shutdown, nor intended to define a reasonable shutdown period or prescribe that s.93(3) concerns shutdown. To be clear, section 93(3) concerns the direction to an employee to take paid annual leave. I do not agree with the HACSU submissions that the Explanatory Memorandum or Parliament’s intention is to limit the prescription of closedown circumstances as provided by the example and relied upon as the basis for objection to the proposed clause.

[18] The Full Bench in the 4 Yearly Review determined that notification of a shutdown without any other considerations does not satisfy the criteria of reasonableness in s.93(3).¹⁶ The Bench considered the Explanatory Memorandum in its deliberations and did not find that the reference to closedowns requires limited circumstances. Reference to closedown and reducing levels of annual leave in paragraph 381 are just examples. Paragraph 382 provides

¹² [2022] FWCFB 161, [153] – [155].

¹³ *4 yearly review of modern awards-Plain language-Shutdown provisions* [2022] FWCFB 246.

¹⁴ [2022] FWCFB 161, [138].

¹⁵ *Fair Work Bill 2008* Explanatory Memorandum at [381].

¹⁶ [2022] FWCFB 161, [139].

guidance in assessing reasonableness; in this paragraph there are no prescriptive conditions- the list contains “relevant considerations.” The full reference to paragraphs 381 and 382 of the Fair Work Bill 2008 Explanatory Memorandum which puts into context application of s.93(3) follows:

‘381. Subclause 93(3) permits terms to be included in an award or agreement that require an employee, or that enable an employer to require or direct an employee, to take paid annual leave in particular circumstances, but only if the requirement is reasonable. This may include the employer requiring an employee to take a period of annual leave to reduce the employee’s excessive level of accrual or if the employer decides to shut down the workplace over the Christmas/New Year period.

382. In assessing the reasonableness of a requirement or direction under this subclause it is envisaged that the following are all relevant considerations:

- the needs of both the employee and the employer’s business;
- any agreed arrangement with the employee;
- the custom and practice in the business;
- the timing of the requirement or direction to take leave; and
- the reasonableness of the period of notice given to the employee to take leave.’

[19] The Agreement term in relation to shutdown refers to considerations to assess reasonableness, such as the minimum 8 week consultation period, consideration of redeployment, limitation to the period that an employee may be directed to take accrued leave, use of accrued days off or time off in lieu of overtime, unpaid time off work, leave in advance and the maximum period of 2 weeks of annual leave (3 weeks in St James Ward). During proceedings, the Applicant described the custom and practice to address reasonableness and no evidence was led that there have been any disputes or concerns with its operation. The reasons for shutdown or partial shutdown concerns availability of medical practitioners and demand from patients over the period that is prescribed in the Agreement.

[20] There are few decisions that contemplate the test of reasonableness in situations where the employer determines to shutdown all of its operation or to partially shut down, and to direct employees to take annual leave. However, in *AGL Torrens Island Pty Ltd v Australian Municipal Administrative Clerical and Services Union (AGL)*¹⁷ Deputy President Bartel made some useful observations:

- A direction that the employee takes annual leave for a period, or part of the period of the shutdown, is subject to the test of reasonableness in s.93(3) of the Act.¹⁸

¹⁷ [2014] FWC 4193.

¹⁸ Ibid [40].

- The Commission’s research paper published as part of the 4 yearly review of modern awards states that the Act does not contain a specific shutdown provision, however it does grant some flexibility.¹⁹
- There is no singular meaning of shutdown or singular purpose.²⁰
- Taking into account the Explanatory Memorandum, the test of reasonableness is at the individual employee level taking into account their particular circumstances.²¹
- The test of reasonableness needs to weigh competing interests.²²

[21] I do not find that clause 37(l) excludes or displaces the NES, rather it is an incidental clause to the operation of annual leave and therefore consistent with s.93(3) of the Act. Further, I am satisfied that both the clause and the Applicant’s practices have the necessary limitations and safeguards to direct the taking of annual leave for approval of the Agreement.

[22] The HACSU also submit that clause 37(l) ‘represents a less beneficial term for the purposes of the BOOT. It submits that ‘medical practices’ Reference in the Nurses Award 2020 refers to general practices and the like and do not include ‘hospitals. Whilst shut down is provided for in the Nurses Award for medical practices, it is not similarly prescribed for ‘hospitals.’ Accordingly, a clause providing for the mandatory taking of annual leave in the event of shutdown represents a provision that is less beneficial than the position in the Nurses Award.’²³

[23] The HACSU did not provide any evidence that the reference to medical practices in the Award does not include hospitals or that it specifically excludes hospitals. The Award in clause 22.7 and 22.8 distinguishes the practice of directing nurses to take annual leave between medical practices and other businesses or operations captured by the coverage of the Award. I observe the coverage of the Award includes “health services” which is defined as “*employers in the business and/ or activity of providing health and medical services and who employ nurses and persons who directly assist nurses in the provision of nursing care and nursing services.*” This definition differs from the definition of an aged care employee. There is no definition of “medical practices” for the purposes of clause 22.7 or elsewhere. For this reason I do not agree with the HACSU that clause 22.7 does not apply to hospitals. The practical separation of provisions in the Award concern the capacity to direct nurses to take leave and in respect of rates for nurses working in aged care as opposed to medical services. On this basis I do not agree that the reference to medical practices is intended to not cover, or to exclude hospitals. In the absence of evidence supporting the HACSU submission, I cannot find that the clause in the Agreement represents a less beneficial term than in the Award.

[24] I do not find in favour of the objections raised in respect to clause 37(l). The clause is not inconsistent with the Act, does not displace NES entitlements, there is no evidence of abuse of the clause which goes to reasonableness, the clause meets the operational requirements of the business and weighs the interest of employees with appropriate and relevant limitations and safeguards, nor I do not agree that the clause allows an unfettered right to abuse the consultation provisions. The clause does not offend the NES nor the BOOT.

¹⁹ Ibid [42] and referenced in [55] of the research paper.

²⁰ Ibid [44].

²¹ Ibid at [47].

²² Ibid at [49].

²³ HACSU written submissions [9].

Clause 37(a)(ii)(1) – shift workers additional leave entitlements

[25] The HACSU submit that s.187 of the Act provides that ‘additional requirements’ must be satisfied for an enterprise agreement to be approved, particularly s.187(4) concerns particular kinds of employees as referenced in any provision within subdivision E. Section 196 within subdivision E deals with shiftworkers. It is not contested that the Applicant engages shiftworkers and for the purposes of s.196(1)(b) of the Act, the modern award in operation and which covers employees or describes the employee as a shiftworker for the purposes of the NES is the *Nurses Award 2020*. Having determined application of s.196(1), the Commission “must be satisfied that the Agreement defines or describes the employee as a shiftworker for the purposes of the NES.”²⁴

[26] Relevantly clause 22.2 of the *Nurses Award 2020* provides:

‘22.2 Quantum of annual leave

- (a) In addition to the entitlements in the NES, an employee is entitled to an additional week of annual leave on the same terms and conditions.
- (b) A **shiftworker**, for the purposes of the additional week’s annual leave provided by the NES, is an employee who:
 - (i) is regularly rostered over 7 days of the week; and
 - (ii) regularly works on weekends.
- (c) To avoid any doubt, this means that an employee who is not a shiftworker for the purposes of clause 22.2(b) above is entitled to 5 weeks of paid annual leave for each year of service with their employer, and an employee who is a shiftworker for the purposes of clause 22.2(b) above is entitled to 6 weeks of paid annual leave for each year of service with their employer.’

[27] Clause 37(a)(ii)(1) of the Agreement provides:

- ‘(ii) Shift workers -- Additional week of annual leave
 - (1) In addition to the leave prescribed in sub-clause (i) above, shift workers, (as defined hereunder) will be entitled to an additional one week of paid annual leave. For the purposes of the NES and this clause a shift worker is defined as an Employee who:
 - (A) is regularly rostered to work over seven days of the week; and regularly works weekends; or
 - (B) works not less than 20 weekend ordinary shifts (or any combination of Saturdays and Sundays to a total of not less than 20 shifts) in any one leave year; or

²⁴ Section 196(2) *Fair Work Act 2009*.

- (C) Where an Employee with at least 12 months' continuous service is engaged for part of the 12-monthly period as a shift worker (as per 37(a)(ii)(1)(A) or (B)), he/she shall be entitled to have the period of annual leave as per sub-clause (a)(1) applied on a pro-rata basis.'

[28] I observe that the clause in the Agreement is identical to the clause in the current agreement. The HACSU contend that the Award provides 5 weeks of annual leave and shiftworkers entitled to 6 weeks. While the Agreement provides an additional week of leave for shiftworkers as required by s.196(1) of the Act, the application of clause 22.2(a) of the Award provides a further week of leave in addition to the NES. The HACSU submit that the discrepancy is a NES issue, while the Applicant contends that it is not a NES but BOOT issue. The Applicant further contends that because of the higher rates of pay, the Agreement compensates for the differential. In addition, the Applicant contends that the definition of shiftworker in the Agreement is broader than the Award definition at clause 37(a)(ii)(1)(B).

[29] In this instance both the day workers and shiftworkers receive one week less in annual leave, despite the broader definition at s.37(a)(ii)(1)(B). I agree that that issue raised by the HACSU is not a NES issue but rather an issue of the better off overall test. The NES requirement has been met. In terms of the BOOT, the analysis of nurses not receiving an additional week of leave does not result in a BOOT issue. Further evaluation on the lowest remuneration rate, shows that the Agreement provides for a rate better than \$241 per week than the Award rate. The rates of pay in the Agreement are high enough to compensate for the difference in annual leave.

Various clauses that are less beneficial in terms of the better off overall test

[30] The HACSU further raised a number of other terms of the Agreement that they deemed to be less beneficial. The concerns raised are as follows:

1. Cl. 12 (c)(iii): Casual employees are paid less when working overtime than equivalent Nurses Award (the Award) casual employees. For Award employees the overtime penalty is applied to the casual loaded rate. For Agreement employees the casual loading is excluded in the calculation.
2. Cl. 14(e): The Award provides for a 10 hour rest break between shifts. The Agreement only provides for a 9 hour rest break.
3. Cl. 15(d): Broken shifts are not a supported system of work and contrary to the Award which does not provide for broken shifts.
4. Cl. 18(a) first dot point: Time worked before midnight on a Sunday is not paid at Sunday penalty rates. The Award provides that such time would be paid at Sunday penalty rates.
5. Cl. 20(e): Rest period after overtime is only 8 hours. The Award provides for 10 hours rest period after overtime.
6. Cl. 22(a)(i): Rate for being on-call is only an hourly rate – the Award provides for minimum rates for 24 hours 'or part thereof'. For example, an employee that is on-

call for, say 4 hours in a 24 hour period, will be worse off than the same Award employee.

7. Cl. 28: An employee must work 5 or more consecutive days performing higher duties in order to be paid at the higher rate. The Award provides for payment of the higher rate for employees performing duties for 3 days or more.

...

9. Schedule 1: Rostering Arrangements Theatre and Endoscopy: The Schedule applies in priority to other Agreement terms. It contains less beneficial matters:
 - a. 2.4: Shifts of 4 hours or less will be worked by mutual agreement – this clause appears to remove any minimum engagement. The Award provides a two hour minimum engagement for casuals.
 - b. 4: Eligibility for 5 weeks leave imposes conditions that are not contained in the Award (5 weeks leave exists as of right)²⁵

[31] In assessing the BOOT, a comparison of the base rates of pay in the Agreement to base rates in the Award demonstrates that all employees are receiving between 25.02%-77.93% above the Award. Pursuant to s.193A of the Act I am required to make a global assessment of whether each employee would be better off overall, not to make a line-by-line analysis of the Agreement. In respect of the less beneficials raised by the HACSU, I am of the view that the substantially above Award rates of pay ensure that employees will be better off overall in all of the circumstances envisioned by the HACSU. This assessment is balanced by terms that provide greater flexibility without impact on the BOOT such as the potential for broken shifts or the application of a night shift penalty even though the Sunday shift penalty does not apply, noting that the Agreement night shift penalty is 27.5% compared to 15% under the Award, or that penalties which align to the Award are paid on higher base rates and the payment of a higher base rate when performing higher shift duties.

[32] In relation to issue 9 a, the Applicant in their email submissions raised that the mutual agreement to work a shift of 4 hours or less in Schedule 1 clause 2.4 does not remove the minimum engagement in clauses 12(b)(iii) and (c)(i) of the Agreement. I am of the view that Schedule 1 clause 2.4 is not inconsistent with the minimum engagements and read together shifts cannot be agreed to of less than 3 hours.

Redundancy clause undertaking

[33] The Commission raised concerns regarding the clause 50(k) of the Agreement which concerns the ability to vary severance payments. The clause reads as follows:

“Where the Employer obtains acceptable alternative employment for the Employee the severance payment scheme under subclause (e) will not apply. The Employee may otherwise have an entitlement to a severance payment, subject to sections 119 and 120 of the Act.”

²⁵ Form F18A, question 7.

[34] In raising the issue, I advised that this is inconsistent with the NES however the NES precedent clause in clause 6 remedies this concern. In their email submissions the HACSU raise further concerns with this clause. In their written submissions of 26 February 2024, the Applicant proposed the following undertakings to remedy the inconsistencies:

Clause 50(k) of the Agreement is replaced with the following:

“Where the Employer obtains alternative employment for the Employee, the Calvary severance payment scheme under subclause (e) will not apply, and any entitlement to severance pay for the Employee will be in accordance with s.119 of the Act. On application by the Employer, the FWC may determine that the amount of severance pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate. Disputes in relation to this clause may be dealt with in accordance with clause 10 – Dispute Resolution Procedure”

[35] The Applicant provided signed undertakings per the above on 6 March 2024 and a further revised undertaking on 7 March 2024 following concerns raised by HACSU in relation to the undertakings. Clause 50(k) is accordingly replaced with the following (changes underlined):

“Where the Employer obtains acceptable alternative employment for the Employee, the Calvary severance payment scheme under subclause (e) will not apply, and any entitlement to severance pay for the Employee will be in accordance with s.119 of the Act. Subject to s.120 of the Act, on application by the Employer, the FWC may determine that the amount of severance pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate. Disputes in relation to this clause may be dealt with in accordance with clause 10 – Dispute Resolution Procedure”

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

Other Matters

[37] The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (Amending Act) made a number of changes to enterprise agreement approval processes in Part 2-4 of the *Fair Work Act 2009*, that commenced operation on 6 June 2023. Under transitional arrangements, amendments made by Part 14 of Schedule 1 to the Amending Act in relation to *genuine agreement* requirements for agreement approval applications apply where the *notification time* for the agreement was on or after 6 June 2023. The *genuine agreement* provisions in Part 2-4 of the *Fair Work Act 2009*, as it was just before 6 June 2023, continue to apply in relation to agreement approval applications where the notification time for the agreement was before 6 June 2023. The notification time for the Agreement was before 6 June 2023.

[38] Under transitional arrangements, amendments made by Part 16 of Schedule 1 to the Amending Act in relation to the *better off overall test* requirements for agreement approval applications apply where the agreement was *made* on or after 6 June 2023. The *better off overall test* provisions in Part 2-4 of the *Fair Work Act*, as it was just before 6 June 2023, continue to

apply in relation to agreement approval applications where the agreement was made before 6 June 2023. The Agreement was *made* after 6 June 2023.’

[39] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 are relevant to this application for approval and have been met. The Agreement does not cover all of the employees of the employer, however, taking into account the factors in ss.186(3) and (3A) I am satisfied that the group of employees was fairly chosen.

[40] The ANMF and the HASCU being bargaining representatives for the Agreement, have 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.

[41] The Agreement is approved and in accordance with s.54, will operate from 14 March 2024. The nominal expiry date of the Agreement is 1 July 2025.



COMMISSIONER

Printed by authority of the Commonwealth Government Printer

< AE523759 PR772132 >

ANNEXURE A



Hospitals
Home Care
Virtual Care
Retirement Living
Residential Aged Care

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2023/5446

Applicant:

Calvary Health Care Tasmania Limited

Section 185 – Application for approval of a single enterprise agreement

Undertaking- Section 190

I, Mark Douglas, Industrial Relations Manager for Calvary Health Care Tasmania Limited ("Calvary") give the following undertakings with respect to the *Calvary Health Care – Tasmania Private Hospitals – Nurses and Midwives Enterprise Agreement 2022* ("the Agreement"):

1. I have the authority given to me by Calvary to provide this undertaking in relation to the application before the Fair Work Commission.
2. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.
3. Clause 50(k) of the Agreement shall be read as being replaced in its entirety with the following:

"Where the Employer obtains acceptable alternative employment for the Employee, the Calvary severance payment scheme under subclause (e) will not apply, and any entitlement to severance pay for the Employee will be in accordance with s.119 of the Act. Subject to s.120 of the Act, on application by the Employer, the FWC may determine that the amount of severance pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate. Disputes in relation to this clause may be dealt with in accordance with clause 10 – Dispute Resolution Procedure."

Signed:

A handwritten signature in black ink, appearing to be "Mark Douglas".

Mark Douglas
Industrial Relations Manager
7 March 2024



**CALVARY HEALTH CARE
TASMANIA - PRIVATE
HOSPITALS**

**NURSES AND MIDWIVES
ENTERPRISE AGREEMENT
2022
EMPLOYEES**

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

ENTERPRISE AGREEMENT

1. ARRANGEMENT

The Agreement is arranged as follows:

<u>Subject Matter</u>	<u>Page No.</u>
NURSES AND MIDWIVES	Error! Bookmark not defined.
1. ARRANGEMENT	2
Part 1 – Application and Operation	4
2. TITLE, COMMENCEMENT and EXPIRY.....	4
3. DEFINITIONS.....	4
4. COVERAGE	6
5. SCOPE OF THE AGREEMENT.....	6
6. RELATIONSHIP TO NATIONAL EMPLOYMENT STANDARDS	6
7. FLEXIBILITY ARRANGEMENT	6
8. FLEXIBLE WORKING ARRANGEMENTS	7
Part 2 – Consultation and Dispute Resolution	8
9. CONSULTATION REGARDING CHANGE.....	8
10. DISPUTE RESOLUTION PROCEDURE	10
Part 3 – The Employment Relationship	11
11. EMPLOYMENT CATEGORIES AND CONTRACT OF EMPLOYMENT	11
12. EMPLOYMENT CATEGORIES	11
13. STAFFING LEVELS	13
Part 4 – Hours of Work and Rostering	14
14. HOURS OF WORK	14
15. ROSTERS	16
16. 12 HOUR SHIFT ROSTER ARRANGEMENTS.....	17
17. SHIFT WORK.....	17
18. SATURDAY AND SUNDAY WORK.....	18
19. BREAKS.....	18
20. OVERTIME.....	19
21. OVERTIME MEAL.....	21
22. CALL ARRANGEMENTS	21
Part 5 – Wages and Related Matters	23
23. WAGES.....	23
24. PAYMENT OF WAGES.....	23
25. OVERPAYMENTS	24
26. UNDERPAYMENTS.....	24
27. SUPERANNUATION AND SALARY PACKAGING	24
28. HIGHER DUTIES	26
29. IN CHARGE ALLOWANCE.....	26
30. MEAL ALLOWANCE	26
31. POST GRADUATE ALLOWANCE.....	26
32. PRECEPTOR ALLOWANCE	27
33. TRAVELLING AND FARES	27
34. UNIFORMS AND PROTECTIVE CLOTHING.....	27
35. LEAD APRON ALLOWANCE	27
36. ENROLLED NURSE ADVANCED DIPLOMA ALLOWANCE	27
Part 5 - Leave and Public Holidays	28
37. ANNUAL LEAVE	28
38. PURCHASED LEAVE	31
39. PERSONAL/CARER'S LEAVE	32
40. COMPASSIONATE LEAVE	34
41. PUBLIC HOLIDAYS	34
42. PARENTAL LEAVE.....	35
43. LONG SERVICE LEAVE.....	39
44. PROFESSIONAL DEVELOPMENT	39
45. MANDATORY TRAINING	40

46.	REPRESENTATIVES LEAVE	40
47.	CEREMONIAL LEAVE	40
48.	LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE	41
49.	EMERGENCY SERVICES LEAVE	42
	Part 6 – Ending Employment	44
50.	REDUNDANCY	44
51.	TERMINATION OF EMPLOYMENT	46
	SCHEDULE 1: ROSTERING ARRANGEMENTS THEATRE AND ENDOSCOPY	51
	SCHEDULE 2: WAGES SCHEDULE	55
	SCHEDULE 3: CLASSIFICATIONS	59
	SCHEDULE 4: PRINCIPLES FOR WORKLOAD MANAGEMENT	61

Part 1 – Application and Operation

2. TITLE, COMMENCEMENT and EXPIRY

- (a) The enterprise agreement is the Calvary Health Care – Tasmania Private Hospitals – Nurses and Midwives Enterprise Agreement 2022 ('the **Agreement**').
- (b) This Agreement shall commence 7 days after the approval by the Fair Work Commission. The nominal expiry date for this Agreement is 1 July 2025.
- (c) The parties undertake to commence discussions regarding a new Agreement no later than six months prior to the expiry date of this Agreement.

3. DEFINITIONS

In this Agreement, unless the contrary intention appears:

- (a) "**Act**" shall mean the *Fair Work Act 2009*, as amended.
- (b) "**Afternoon shift**" means any shift terminating between 6.00pm and 11.30pm.
- (c) "**Agreement**" means the Calvary Health Care – Tasmania Private Hospitals – Nurses and Midwives Enterprise Agreement 2022.
- (d) "**ANMF**" means the Australian Nursing and Midwifery Federation (Tasmanian Branch)
- (e) "**Casual Employee**" means an employee employed in accordance with the meaning at section 15A of the Act..
- (f) "**Clinical Manager**" means a Registered Nurse who is appointed as Director of Nursing/Registered Nurse Level 5 (however titled) and who is a member of the executive management team, and is responsible and accountable for the overall coordination of the Clinical Services Division.
- (g) "**Clinical unit**" means an area of nursing practice, as agreed between the parties, and without limiting the foregoing shall include a ward, area or place of nursing practice with a patient/client population.
- (h) "**Day shift**" means a shift worked between the hours of 6.00am and 6.00pm but does not include an Employee working on Saturday or Sunday.
- (i) "**Day worker**" means an Employee appointed as such to work their weekly ordinary hours of work between the period of 6.00am and 6.00pm on the days Monday to Friday inclusive.
- (j) "**Employer**" means Calvary Health Care Tasmania Ltd (ABN 291 299 267 90) with regard to its hospital operations in the State of Tasmania.
- (k) "**Employee**" means nursing employees employed by the Employer in the classifications listed at Schedule 3.
- (l) "**Full-time Employee**" means a person engaged to work for 38 ordinary hours per week in accordance with clause 12(a).
- (m) "**FWC**" means the Fair Work Commission, the statutory body established under the Act or any successor organisation established under Commonwealth legislation

which performs the functions of conciliation and arbitration.

- (n) **“HACSU”** means the Health Services Union Tasmania Branch
- (o) **“Management unit”** means for the purpose of these definitions a grouping of units as determined by the Employer.
- (p) **“Night shift”** means a shift that is not day work, or a day or afternoon shift.
- (q) **“NES”** means National Employment Standards.
- (r) **“Ordinary rate ”** means the base rate of pay for the Employee’s classification as set out at Schedule 2 of the Agreement, but does not include overtime penalty rates, allowances, loadings, shift penalties, incentives, bonuses and other ancillary payments of a like nature. Notwithstanding the exclusion of allowances, the Ordinary rate does include any post graduate allowance payable to an Employee in accordance with clause 31 of this Agreement.
- (s) **“Part-time Employee”** means an Employee, other than a full-time Employee or casual Employee, engaged to work regularly in each pay period for less hours than an equivalently classified full-time Employee.
- (t) **“Part-time shift worker”** means a part-time Employee who holds a position on a roster.
- (u) **“Roster”** means a documented arrangement setting out clearly the names of the Employees required to work in accordance with such roster, the days, dates and hours during which each Employee is required to attend for duty.
- (v) **“Shift worker”** means an Employee other than a day worker.
- (w) **“Superannuation Law”** means any requirement under the Superannuation Industry (Supervision) Act 1993 (Cth), Superannuation Industry (Supervision) Regulations 1994 (Cth), Superannuation Guarantee (Administration) Act 1992 (Cth), Superannuation Guarantee (Administration) Regulations 1993 (Cth), Superannuation Guarantee Charge Act 1992 (Cth), and any other present or future legislation which the Employer must comply with to satisfy its superannuation obligations to the Employees.
- (x) **“Year of service”** shall mean 1976 hours of actual service in an approved establishment, including public holidays, paid annual leave, and paid personal/carers leave.
- (y) **immediate family** of an Employee means:
 - (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
 - (ii) a child, parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.
 - (iii) **“spouse”** includes a former spouse.
 - (iv) **de facto partner** of an Employee:
 - (1) means 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

(2) includes a former de facto partner of the Employee.

(v) **Child** means a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child).

4. COVERAGE

The Agreement shall cover:

- (a) Calvary Health Care Tasmania (A.B.N. 291 299 267 90), with regards to its hospital operations in the State of Tasmania (**the Employer**).
- (b) Nursing Employees employed by the Employer as classified in Schedule 3.
- (c) This Agreement is made under section 172 of the *Act*. The Employer will take the necessary steps to seek approval of this Agreement under section 186 of the *Act*.
- (d) The Employer will formally advise the ANMF and HACSU that the Agreement is made in order for the ANMF and HACSU to apply under section 183 of the *Act* to be covered by the Agreement.
- (e) It is the intention of this Agreement that the ANMF and HACSU will be covered by this Agreement.

5. SCOPE OF THE AGREEMENT

The Agreement contains all the terms and conditions of employment for Employees covered by the Agreement and shall apply to Employees employed by the Employer.

6. RELATIONSHIP TO NATIONAL EMPLOYMENT STANDARDS

Entitlements in accordance with the NES are provided for under the *Act*. Where this Agreement also has provisions regarding matters dealt with under the NES and the provisions in the NES set out in the *Act* are more favourable to an Employee in a particular respect than those provisions, then the NES will prevail in that respect and the provisions dealing with that matter in this Agreement will have no effect in respect of that Employee. The provisions in this Agreement otherwise apply.

7. FLEXIBILITY ARRANGEMENT

- (a) The Employer and an Employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (i) the agreement deals with 1 or more of the following matters:
 - (1) arrangements about when work is performed;
 - (2) overtime rates;
 - (3) penalty rates;

-
- (4) allowances;
 - (5) leave loading; and
 - (ii) the arrangement meets the genuine needs of the Employer and Employee in relation to 1 or more of the matters mentioned in paragraph (a)(i); and
 - (iii) The Employer and the individual Employee must have genuinely made the agreement without coercion or duress.
 - (b) The Employer must ensure that the terms of the individual flexibility arrangement:
 - (i) are about permitted matters under section 172 of the Act; and
 - (ii) are not unlawful terms under section 194 of the Act; and
 - (iii) result in the Employee being better off overall than the Employee would be if no arrangement was made.
 - (c) The Employer must ensure that the individual flexibility arrangement:
 - (i) is in writing; and
 - (ii) includes the name of the Employer and Employee; and
 - (iii) 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
 - (iv) includes details of:
 - (1) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (2) how the arrangement will vary the effect of the terms; and
 - (3) 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
 - (v) states the day on which the arrangement commences.
 - (d) The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
 - (e) The Employer or Employee may terminate the individual flexibility arrangement:
 - (i) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (ii) if the Employer and Employee agree in writing — at any time.
 - (f) The relevant Employee may appoint a representative for the purposes of the procedures in this term. A representative may include the ANMF and/ or the HACSU.

8. FLEXIBLE WORKING ARRANGEMENTS

Requests for flexible working arrangements are provided for in the NES.

Part 2 – Consultation and Dispute Resolution

9. CONSULTATION REGARDING CHANGE

- (a) This term applies if the Employer:
- (i) 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
 - (ii) proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

Major change

- (b) For a major change referred to in (a)(i):
- (i) the Employer must notify the relevant employees of the decision to introduce the major change; and
 - (ii) subclauses (c) to (i) apply.
- (c) The relevant Employees may appoint a representative for the purposes of the procedures in this term. A representative may include the ANMF and/ or the HACSU.
- (d) If:
- (i) a relevant Employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - (ii) the Employee or employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

- (e) As soon as practicable after making its decision, the Employer must:
- (i) discuss with the relevant Employees:
 - (1) the introduction of the change; and
 - (2) the effect the change is likely to have on the Employees; and
 - (3) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
 - (ii) for the purposes of the discussion--provide, in writing, to the relevant employees:
 - (1) all relevant information about the change including the nature of the change proposed; and
 - (2) information about the expected effects of the change on the employees; and
 - (3) any other matters likely to affect the employees.
- (f) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

-
- (g) The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
 - (h) 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 (b)(i) and subclauses (c) and (e) are taken not to apply.
 - (i) In this term, a major change is **likely to have a significant effect on employees** if it results in the termination of the employment of Employees; or major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or the alteration of hours of work; or the need to retrain Employees; or the need to relocate employees to another workplace; or the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (j) For a change referred to in (a)(ii):
 - (i) the Employer must notify the relevant Employees of the proposed change; and
 - (ii) subclauses (k) to (o) apply.
- (k) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- (l) If:
 - (i) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - (ii) the Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

- (m) As soon as practicable after proposing to introduce the change, the Employer must:
 - (i) discuss with the relevant Employees the introduction of the change; and
 - (ii) for the purposes of the discussion--provide to the relevant Employees:
 - (1) all relevant information about the change, including the nature of the change; and
 - (2) information about what the Employer reasonably believes will be the effects of the change on the Employees; and
 - (3) information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
 - (iii) 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).
- (n) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

-
- (o) The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
 - (p) In this term:
"relevant Employees" means the Employees who may be affected by a change referred to in (a).

10. DISPUTE RESOLUTION PROCEDURE

- (a) In the event of a dispute in relation to a matter arising under this Agreement or the NES, in the first instance the parties will attempt to resolve the matter at the workplace by discussions between the Employee or Employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the Employee or Employees concerned and more senior levels of management as appropriate.
- (b) A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.
- (c) If a dispute in relation to a matter arising under the Agreement or the NES is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the FWC for resolution by conciliation and, where the matter in dispute remains unresolved, arbitration.
- (d) It is a term of this Agreement that while the dispute resolution procedure is being conducted work shall continue according to the custom and practice/ status quo before the grievance arose unless an Employee has a reasonable concern about an imminent risk to his or her health or safety.
- (e) If arbitration is necessary the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective.
- (f) For the avoidance of doubt, Employee grievances are included in the matters to be dealt with in accordance with the dispute resolution procedure of the Agreement.

Part 3 – The Employment Relationship

11. EMPLOYMENT CATEGORIES AND CONTRACT OF EMPLOYMENT

Each Employee will:

- (a) be employed on either a full-time, part-time or casual basis in accordance with the terms of this Agreement;
- (b) at the time of engagement, be informed in writing by the Employer whether they are employed on a full-time, part-time or casual basis, shift worker or day worker and their classification.

12. EMPLOYMENT CATEGORIES

(a) Full-time Employees

A full-time Employee is one who is engaged to work 38 hours per week or an average of 38 hours per week pursuant to Clause 14 - Hours of Work.

(b) Part-time Employees

- (i) A part-time Employee is an Employee who is engaged to work less than an average of 38 ordinary hours per week and whose hours of work are reasonably predictable. Before commencing part-time employment, the Employer and Employee will agree in writing the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours. The terms of the agreement may be varied by agreement and recorded in writing. 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.

(ii) Penalty rates

The penalty rates prescribed for full-time Employees for work on Saturdays, Sundays and public holidays are applicable to part-time Employees.

(iii) Minimum work provided

Part-time Employees shall be provided with a minimum of three (3) continuous hours work or, alternatively, paid for a minimum of three (3) hours on each occasion they are required to attend for work.

(iv) Review of Contracted Hours

Where the Employee is regularly working more than their specified contract hours they may request that their contracted hours are reviewed by the Employer. The Employer will formally respond to the request by the Employee stating the reasons if the request is not agreed to. The Employer will not unreasonably reject the request. The Employer will also take into account that the hours worked in the following circumstances will not be incorporated to any adjustment made:

- (1) 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

-
- (2) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a patient.

Any adjusted contracted hours resulting from a review by the Employer should however, be such as to readily reflect roster cycles and shift configurations utilised at the Hospital.

(c) Casual Employees

(i) Terms of engagement

- (a) A casual employee is an employee employed in accordance with the meaning at section 15A of the Act.
- (b) The minimum period of engagement of a casual employee is 3 hours.

(ii) Payment for ordinary time

- (1) Unless otherwise prescribed elsewhere in this Agreement, for each ordinary hour worked a casual employee must be paid the minimum ordinary hourly rate applicable to the classification and pay point in which they are employed; and a loading of 25% of the ordinary hourly rate (the **Casual Rate**).
- (2) The casual loading is paid instead of annual leave, paid personal leave, public holidays not worked, notice of termination, redundancy payments and all other NES entitlements that are not available to casual employees.

(iii) Payment for shift, weekend work and public holidays

- (1) A casual Employee will be paid shift and weekend penalties applied to the Casual Rate.
- (2) A casual Employee who works a public holiday will be paid at the rate of double time and a half the ordinary rate (in lieu of the casual loading) for such time worked.
- (3) A casual Employee will be paid overtime penalties calculated on the ordinary rate (in lieu of the casual loading).

(iv) Notice of Work

The Employer will provide the following notice of the cancellation of a shift:

- (1) For AM shifts if less than 10 hours' notice is given, unless otherwise agreed, a payment of 3 hours single time will be made.
- (2) For PM shifts if less than 3 hours' notice is given, unless otherwise agreed, a payment of 3 hours single time will be made.
- (3) For Night shifts, if less than 6 hours' notice is given, unless otherwise agreed, a payment of 3 hours single time will be made.
- (4) A Casual Employee who has their shift cancelled with less than the requisite notice in subclause (d)(i), (ii) and (iii) and who has incurred child care fees as a result, shall on presentation of receipts to the

Employer, be entitled to a full reimbursement of those child care costs provided that the claim for reimbursement must be made to the Employer within 2 pay fortnights of incurring the loss.

- (d) Offers and requests for casual conversion
 - (i) Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the NES.
 - (ii) In addition to the NES, a casual employee who works regularly and systematically for 6 months may request casual conversion. Casual conversion will only be refused on reasonable grounds.

13. STAFFING LEVELS

- (a) In accordance with the Workload Principles set out at Schedule 4 of this Agreement, Calvary is committed to ensuring that staffing levels are appropriate, in order to ensure the delivery of high quality patient care and a safe working environment for nurses.

It is acknowledged that existing flexibility in respect of staffing will be maintained. The current practice of staffing based on collaboration between Nursing Administration and Ward/unit management will continue on a shift basis, taking into account both occupancy and patient acuity.

- (b) Should any nurse or group of nurses in any one ward or unit feel the workloads are unreasonably heavy, on a regular basis, then they have a responsibility to discuss their concerns with their nurse manager (**Notification Date**). The nurse unit manager shall investigate any issue. If the nurse unit manager is unable to resolve the workload issue or respond, the issue is to be referred to the Director of Clinical Services within a period of 7 days from the Notification Date. The Employee may be represented by any nominated Employee representative which may be a union representative.

It is the intent of the parties that the issue be initially dealt with as close to the source as possible, with graduated steps for further discussion and resolution at higher authority levels where necessary. If the matter is not settled with a reasonable period of time, the Employee (or their nominated Employee representative) may utilise the dispute settlement procedure of this Agreement.

- (c) Staffing Levels is an agenda item for all unit/ward meetings and is to be reviewed collaboratively. Such meetings should occur on a regular basis and are the forum to receive feedback on progress of any particular issue regarding staffing. Rostering patterns, meal breaks and staff mix are to be reviewed by the team with any recommendations to address issues to be presented, in writing and with specific examples, to the Director of Clinical Services.
- (d) In determining whether staffing levels are appropriate, factors that should be considered include (but are not limited to): occupancy, patient acuity, the skill level of staff, the availability of support staff, patient movements - admissions, discharges and transfers, the availability of support staff, practice within comparative wards/units within other Calvary facilities and professional nursing standards and conduct as determined by the appropriate regulatory authorities.

Part 4 – Hours of Work and Rostering

14. HOURS OF WORK

- (a) The ordinary hours of work for a full-time Employee will be an average of 76 hours per fortnight or 152 hours over 28 days.
- (b) The ordinary hours of work per day will be a maximum of 8 hours, provided that an Employee and the Employer may mutually agree:
 - (i) to a maximum of 10 ordinary hours in a day;
 - (ii) to a maximum of 12 ordinary hours in a day, to be worked in accordance with Clause 16 of the Agreement.

- (c) Rostered Day Off

Each Employee will be free from duty for a minimum of two consecutive days off each week, except where by mutual agreement between the Employer and the Employee(s) concerned, alternative arrangements are made.

- (d) Span of Hours

- (i) The ordinary hours of work for a day worker will be between 6.00am and 6.00pm Monday to Friday.
- (ii) A shift worker is an Employee who is regularly rostered to work their ordinary hours of work outside the ordinary hours of a day worker as defined in (d)(i).
- (iii) A day worker may agree to work varied ordinary hours, in accordance with that of a shift worker. Such agreement will be recorded in writing and may be terminated by either the Employer or Employee by giving 14 days' notice, whereby the Employee will revert to working in accordance with the day worker span of hours.

- (e) Rest breaks between rostered work

- (i) An Employee will be allowed a rest break of 9 hours between ordinary shifts. By mutual agreement, the break may be reduced to 8 hours.
- (ii) Where a full-time or part-time employee has not had a rest break in accordance with clause 14(e)(i), the ordinary hours worked by the employee will be treated as ordinary time but paid at the equivalent overtime rate, until released from duty for the break per clause 14(e)(i).

- (f) Daylight Savings

Upon the changeover of times as a result of daylight saving in October and April each year the following shall apply:

- (i) Employees shall be paid for actual time worked irrespective of the length of the shift.
- (ii) Employees paid in accordance with subclause (i) are not entitled to claim for the one hour lost and all time worked shall be paid at applicable penalty rates.

(g) Accrued Day Off Arrangements

- (i) A full-time Employee could request to work a nineteen (19) day month, in the form of one (1) paid day off in every two (2) consecutive fortnightly pay periods.
- (ii) This would be a matter for discussion with the Employer to reach a mutual agreement. If there is agreement to implement the 19 day month the following would apply:
 - (1) The accrued day off shall be rostered to fall on a day of the week other than a Saturday or Sunday. The Employer will endeavour to ensure that the accrued day off is rostered to fall either the day immediately before or immediately after rostered days off.
 - (2) Calculation of Allowances - In the calculation of overtime rates, afternoon and night shift allowances and the additional rates for work on Saturdays, Sundays and Public Holidays, the hourly rate shall be calculated at 1/38 of the weekly rate.
 - (3) Absences on leave without pay - As no paid employment existed, 24 minutes for each day of absence should be deducted from the accrued day off.
 - (4) Absence on public holidays and compassionate leave - Days of paid absence on public holidays and compassionate leave shall count toward the accrued day off on full pay

(h) Banking of hours:-

- (i) A full-time or part-time nursing Employee may, by agreement with their NUM or Director of Clinical Services:-
 - (1) Work less than their daily, weekly or fortnightly rostered or contracted hours and work those hours at a later date; or
 - (2) Work more than their daily, weekly or fortnightly rostered or contracted hours and take time off in lieu of payment for the additional hours worked or set off the additional hours worked against any hours banked under the sub-clause above. Time off in lieu is dealt with under clause 20 – Overtime.
- (ii) A nursing Employee who works less than her/his rostered or contracted hours shall nevertheless be paid as if those rostered or contracted hours has been worked during the roster cycle or contracted period. An Employee may only work less than their rostered or contracted hours where they have sufficient banked hours to cover such circumstances.
- (iii) Hours banked under this provision will be banked on the basis of their ordinary time equivalent (for example, two additional ordinary hours will be banked as two hours, each hour worked on a Saturday will be banked as 90 minutes).
- (iv) A nursing Employee may not accumulate more than thirty eight hours in her/his bank under the sub-clauses in Clause 14(h)(i) above at any one time. Any accrual beyond the specified maximum of 38 hours shall be conditional

on prior approval by the Employer.

- (v) Nursing Employees who have accumulated hours to be worked must be given first option to work additional hours prior to the use of on-call or casual nursing Employees.
- (vi) A nursing Employee who agrees to work banked hours on a shift on which a shift allowance is payable shall receive a pro rata allowance for those hours worked on that shift.
- (vii) The Employer must keep proper records of all hours accrued and worked by each nursing Employee.
- (viii) A nursing Employee shall be entitled to full access to her/his record of hours accrued and worked under this provision.
- (ix) Where on termination of employment a nursing Employee has not worked all her/his banked hours, the Employer may, with the written agreement of the Employee, deduct monies paid to the Employee for those banked hours for any entitlements owing to the Employee by the Employer including payment for accrued annual leave and long service leave at the ordinary rate.
- (x) Banked hours will be taken at times mutually agreed between the Employer and Employee. Provided that where there is no agreement the Employer may require Employees to take banked hours at certain times to ensure efficient use of staffing resources.
- (xi) Where an Employee is required to make-up hours taken as per (ii) of this sub clause, those hours may be worked in shifts of up to 10 hours duration by mutual agreement at ordinary time for the purposes of making-up time up to ordinary contracted hours for a particular week or roster cycle.
- (xii) If the Employee does not agree to work the make-up hours by working a 10 hour shift the hours to be made-up must be worked on some other occasion as mutually agreed within the 4 week roster cycle. These make up hours shall be paid at ordinary time.
- (xiii) By agreement in writing between the Employer and the Employee, an Employee may elect to work up to six hours on a particular day or shift without a meal break.

15. ROSTERS

- (a) Employees will work in accordance with a roster fixed by the Employer. In the case of Day and Shift workers, the roster will be of 28 days duration and will set out Employees' daily ordinary working hours and starting and finishing times.
- (b) Posting the Roster
The roster will be posted at least:
 - (i) 4 weeks before the commencement of the roster period.
- (c) Change of Roster
 - (i) Unless the Employer otherwise agrees, an Employee desiring a roster change will give seven days' notice except where the Employee is ill or in an

emergency.

- (ii) Seven days' notice of a change of roster will be given by the Employer to an Employee, provided that in the case of shift workers 4 weeks' notice will be provided by the Employer. Except that, a roster may be altered at any time to enable the functions of the hospital to be carried out where another Employee is absent from work pursuant to clauses 47 – Ceremonial leave; 40– Personal/carers' leave, 40- Compassionate leave and 48 – Leave to deal with Family and Domestic Violence, or in an emergency. Where any such alteration by the Employer requires an Employee:

- (1) working on a day which would otherwise have been the Employee's day off, the day off instead will be as mutually arranged; or
- (2) to change a rostered shift to an alternate day or time, which attracts lower (or nil) penalty rate (**Alternate Shift**) than the shift originally rostered (**Original Shift**), the Employee will be paid for the Alternate Shift worked at the Original Shift higher penalty rate.

- (d) Broken shifts

A broken shift may be worked by mutual agreement between the Employer and the Employee(s). All work performed in excess of a spread of nine hours shall be paid at the rate of double time.

16. 12 HOUR SHIFT ROSTER ARRANGEMENTS

- (a) Notwithstanding the remaining provisions of this Agreement an Employee may agree to work under a 12 Hour Shift Roster Arrangements in accordance with this Clause.

- (i) Participation in 12-Hour Shift Roster

- (1) By mutual agreement an Employee's ordinary hours may be extended to a maximum of (12) ordinary hours per day, per shift.
- (2) Overtime would not apply for 12 hour shifts unless the Employee works beyond the 12 hours.
- (3) Relevant penalties will apply to all hours worked on a Saturday, Sunday or Public Holidays.
- (4) Day shift will attract the afternoon shift penalties as prescribed in this Agreement. For clarity, the penalty rate is applied to the rostered shift.
- (5) Night shift penalties will be as per the Agreement.
- (6) Either party may discontinue these 12 hour shift arrangements with 14 days' notice in writing.
- (7) There will be one (1) thirty minute unpaid break and two (2) fifteen minute paid breaks during the twelve hour shift.

17. SHIFT WORK

- (a) Where an Employee works a rostered afternoon or night shift, the Employee will be paid the following applicable penalty rate in addition to their ordinary rate:

- (i) Afternoon shift – 15%;

-
- (ii) Night Shift – 27.5%
 - (b) For the purposes of this clause, afternoon and night shift are defined at Clause 3 – Definitions, of the Agreement.
 - (c) The shift penalties prescribed in this clause will not apply to shift work undertaken by an Employee on a Saturday, Sunday or Public holiday where weekend or public holiday penalties are payable.

18. SATURDAY AND SUNDAY WORK

- (a) Where an Employee is rostered to work ordinary hours:
 - (i) the major portion of which falls on a Saturday - the Employee will be paid at the rate of time and a half the ordinary rate for the hours worked for the entire rostered shift.
 - (ii) the major portion of which falls on a Sunday - the Employee will be paid at the rate of time and three quarters the ordinary rate for the entire rostered shift.

Provided that:

- where shifts commence between 10.00pm and midnight on a Sunday, the time worked prior to midnight will not be paid at the Sunday penalty rate;
- where the shift commences before midnight on a Saturday and extends into the Sunday, all time worked on the shift will be paid at the Sunday penalty rate.

19. BREAKS

- (a) Meal Breaks
 - (i) An Employee who works in excess of 4 hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes. Such meal break will be taken at or before the 5th hour of work, where reasonably practicable, unless agreed otherwise. Provided that, an Employee engaged to work a shift of six hours or less may mutually agree with the Employer to forgo the unpaid meal break.
 - (ii) Where an Employee is required by the Employer to remain available during a meal break, but is free from duty, the Employee will be paid at the ordinary rate for the 30 minute meal break. This period will not count as time worked when calculating ordinary hours for the purposes of overtime or penalties.
 - (iii) Where an Employee is required by the Employer to perform work or is recalled to duty during a meal break (**Interrupting Work**), the Employee will be paid overtime for all time worked until the meal break (or the balance of the meal break) is taken. Unless authorised otherwise by the Employer, the Employee must immediately commence their meal break (or the remainder of such meal break) upon the conclusion of the Interrupting Work.
 - (iv) Notwithstanding the arrangements set out at (ii) and (iii) above, the after-hours coordinator (however titled), may be rostered by the Employer to remain on premises, be available for their meal break during their rostered shift and engage in Interrupting Work during their meal break (Rostered Paid Meal Break). For a Rostered Paid Meal Break, the Employee will be paid an amount equivalent to the Ordinary Rate (together with any applicable shift or

weekend penalty rate) for their meal break (**Rostered Paid Meal Break Allowance**). Time worked during a meal break is not used in calculating ordinary hours for the purposes of overtime, and is compensated by way of the Rostered Paid Meal Break Allowance.

(b) Paid Tea Breaks

An Employee will be entitled to a 10-minute paid tea break for a shift of four hours or more. Such tea break is to be taken at a time mutually agreed time within the shift.

(c) Charges for meals and snacks provided by Employer

The maximum amount that shall be charged or deducted where an Employee receives a meal or a snack from his/her Employer shall be as provided at Table 3 in Schedule 2.

(d) Meal break when required to work overtime

Unless the period of overtime is one and a half hours or less, an Employee before starting overtime shall be allowed a meal break of 20 minutes which shall be paid for at ordinary rates. The Employer and an Employee may agree to any variation of this provision to meet the circumstances of the work in hand provided that no Employee shall be required to work more than five hours without a break for a meal.

20. OVERTIME

(a) Requirement to work reasonable overtime

(i) Subject to the conditions detailed below an Employer may require an Employee to work reasonable overtime at overtime rates.

(ii) 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 having regard to:

- (1) any risk to Employee health and safety;
- (2) the Employee's personal circumstances including any family responsibilities;
- (3) the needs of the workplace or enterprise;
- (4) the notice (if any) given by the Employer of the overtime and by the Employee of his or her intention to refuse it; and
- (5) any other relevant matter.

(iii) No overtime shall be worked without the prior approval of the Employer

(b) Payment for working overtime

(i) Hours worked in excess of the ordinary hours on any day or shift as prescribed at clause 14(a) and 14(b), are to be paid as follows:

For a day worker:

- (1) Monday to Saturday inclusive - time and a half for the first two hours and double time thereafter;

-
- (2) Sunday - double time;
 - (3) Public holidays - double time and one half (paid as an ordinary days' pay at the ordinary rate plus an additional overtime penalty of time and a half the ordinary rate).

For a shift worker:

- (4) Monday to Sunday– double time.
- (5) Public Holidays – at the applicable public holiday penalty rate.
- (ii) The overtime penalty rates are applied to the ordinary rate and are in substitution and not cumulative upon any shift, weekend or public holiday penalties that would otherwise be payable.

(c) Part-time Employees and Casual Employees

- (i) Hours worked by part-time and casual Employees, in excess of the rostered daily ordinary full-time hours (subject to any agreement to work up to a maximum of 12 ordinary hours in accordance with clause 16) will be overtime and will be paid as prescribed at subclause (b).
- (ii) Time worked up to the rostered daily ordinary hours of work (as per (c)(i)) will not be regarded as overtime but:
 - (1) in the case of a part-time Employee - an extension of the contract hours for that day;
 - (2) in the case of a casual Employee – additional ordinary hours;and will be paid at the ordinary rate.

(d) Time off in lieu of overtime

- (i) Provided that where there is agreement between the Employer and the Employee, the Employee may take time off in lieu of receiving payment for overtime at a mutually agreed time.
- (ii) The Employee may take one hour of time off for each hour of overtime plus a period of time equivalent to the overtime penalty incurred. The time off must be taken within 6 months after the overtime is worked. Where such time off is not taken within 6 months, or upon the termination of the Employee's employment, the Employer must pay the Employee for the overtime at the overtime rate applicable to the overtime when worked.

(e) Rest period after overtime

An Employee (other than a casual Employee) who works so much overtime between the termination of his/her ordinary work on one day and the commencement of his/her ordinary work on the next day that he/she has not had at least eight consecutive hours off duty between those times, shall, subject to this section, be released after completion of such overtime until he/she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If on the instructions of the Employer such Employee resumes or continues work without having had such eight consecutive hours off duty he/she shall be paid at double time until he/she is released from duty for such period and shall then be

entitled to be absent until he/she has eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that Employees have at least eight consecutive hours off duty between the work of successive days.

21. OVERTIME MEAL

- (a) An Employee will be supplied with an adequate meal where the Employer has adequate facilities or be paid an overtime meal allowance as set out at Schedule 2 in addition to any overtime payment as follows:
 - (i) when required to work after the usual finishing hour of work beyond one hour or, in the case of shift workers, when the overtime work on any shift exceeds one hour.
 - (ii) provided that where such overtime work exceeds four hours a further meal will be provided.
- (b) Clause (a) will not apply when an Employee could reasonably return home for a meal within the meal break.
- (c) Provided that the Employer will provide a meal for night duty staff in lieu of the allowance payment set out at subclause (a).

22. CALL ARRANGEMENTS

- (a) Rate for being on call
 - (i) The rate for being on call shall be as set out at Schedule 2 Monday to Friday and as set out at Schedule 2 for Saturdays, Sundays and Public Holidays. These rates shall be increased by the same percentage(s) and at the same time(s) as the percentage(s) that will apply to increases to salary rates as per clause 23.
 - (ii) The parties agree that in accordance with operational requirements staff will be rostered for on call unless agreed otherwise with the respective Employee.
 - (iii) Staff who are on call will be afforded two days free of on call duty per week. This may be averaged over a four week period. The parties acknowledge that from time to time it may not be possible for staff to have two days free from on call duty per week.
- (b) Call back
 - (i) Except where otherwise specifically provided an Employee recalled to work overtime after leaving his/her Employer's premises (whether notified before or after leaving such premises) shall be paid at the appropriate overtime rate applicable to his/her salary:
 - (1) for the first recall a minimum payment of four (4) hours work; and
 - (2) for each subsequent recall a minimum payment of three hours work.

-
- (ii) Provided always that time reasonably spent in getting to and from work shall be regarded as time worked.
 - (iii) Provided further that an Employee who is recalled to work within two hours of his or her normal starting time shall be paid at overtime rates with a minimum payment of two hours at double time and then would be paid at double time for the first two hours from the commencement of the shift, the remaining hours of the shift shall then be paid at the ordinary hourly rate of pay.
- (c) Close call
- (i) An Employee may be required by the Employer to remain on close call (that is on call for duty and not allowed to leave the hospital precincts).
 - (ii) An Employee held on close call shall:
 - (1) if not required to commence work be paid a minimum payment equivalent to six hours at his/her normal salary; or
 - (2) if required to commence work be paid in accordance with the appropriate overtime rate, provided that such payment shall be at least equivalent to the minimum payment set forth in the above.

Part 5 – Wages and Related Matters

23. WAGES

- (a) The current ordinary rate for the respective classifications set out at Schedule 2, excluding AIN/Ms, will be increased as follows:-
 - (i) 3% shall be payable from the first full pay period on or after 1 July 2022
 - (ii) 3% shall be payable from the first full pay period on or after 1 July 2023
 - (iii) 3% shall be payable from the first full pay period on or after 1 July 2024
- (b) The wage rates for AIN/Ms, as adjusted, are set out at Schedule 2 of this Agreement.
- (c) The wage rates and allowances, as adjusted in accordance with this Agreement, are set out at Schedule 2 of this Agreement.
- (d) The wage increases referred to in subclause (a) of this Clause shall be absorbed into any payment made to the Employee beyond the minimum rates contained within the Agreement.
- (e) Any further wage increase, other than as set out at Schedule 2, shall be at the discretion of the Employer, unless the rate of pay falls below the Modern Award rate, in such circumstances the rate of pay shall default to the minimum rate prescribed in accordance with the relevant Modern Award rate.

24. PAYMENT OF WAGES

- (a) Time and interval of payment
 - (i) Wages will be paid fortnightly.
 - (ii) When a public holiday falls on a normal pay day wages shall be paid on the last working day prior to the public holiday.
 - (iii) The present pay day of payment shall not be varied, except after consultation with the Employee(s) concerned and an agreed phasing-in period.
- (b) Method of payment
 - (i) Payment of wages shall be by direct bank deposit or some other method agreed by the Employer, provided that any Employee may nominate which bank or financial institution shall receive the payment of wages.
 - (ii) The present method of payment shall not be varied, except after consultation with the Employee(s) concerned and an agreed phasing-in period.
- (c) Statement of wages
 - (i) The Employer will provide to the Employee, particulars in writing, including by electronic means, setting out full details of the wages the Employee is entitled to in accordance with the Act.
- (d) Payment on termination

-
- (i) Where employment is terminated summarily or on the giving of the prescribed notice all moneys owing shall, where practical, be paid to the Employee on termination.

25. OVERPAYMENTS

- (a) In the event of an overpayment to an Employee where the overpayment has been made in one lump sum the following shall apply.
 - (i) The Employer will negotiate a repayment arrangement with the Employee
 - (ii) If agreement is reached such agreement will be documented and implemented.
- (b) In the event of an overpayment to an Employee where the overpayment has been made over an extended period of time the following shall apply.
 - (i) The Employer will negotiate a repayment arrangement with the Employee
 - (ii) If agreement is reached such agreement will be documented and implemented.
- (c) In the event of exceptional circumstances the provisions of sub-clause (a) and (b) may be waived by agreement between the Employer and the Employee.

26. UNDERPAYMENTS

- (a) Where an error has been made by the Pay Office or validating Manager:
 - (i) On request, if the Net amount is greater than \$50, an electronic payment will be made (two pay slips will be issued in the following pay period)
 - (ii) All other adjustments will be made by an "extra" pay (taxation will not be affected) in the following pay period. Two pay slips will be issued in the following pay period.

Where the error was made by the Employee, an "extra" pay will be made in the following pay period.

27. SUPERANNUATION AND SALARY PACKAGING

27.1 Superannuation

- (a) The Employer will pay compulsory superannuation contributions to Employees, in accordance with and subject to Superannuation Law (subject to the statutory minimum and maximum contribution base). The Employer will make the compulsory superannuation contributions in accordance with trust fund deeds.
- (b) Voluntary superannuation contributions may be made from either pre-tax or after-tax remuneration in accordance with the Salary Sacrifice arrangements set out in this clause.
- (c) For the purposes of superannuation payments, employees may nominate a complying superannuation fund that offers a MySuper product.
- (d) In the absence of a complying nomination, or a 'stapled' fund per Superannuation

Law, the Employer will direct payments to its default fund, being HESTA (ABN: 64 971 749 321) which is MySuper compliant.

- (e) Where an Employee salary packages their wages in accordance with this Agreement, superannuation shall be paid on the pre-packaged wages.

27.2 Salary Packaging

- (a) By agreement with the Employer, an Employee may choose to take part of their remuneration under this Agreement as salary sacrifice benefits (including by making additional pre-tax contributions into their chosen complying superannuation fund). If an Employee makes this choice, the remuneration which would otherwise be payable to the Employee will be reduced by the value of such benefits (including associated costs, charges and taxes).
- (b) Without limiting the Employer's discretion as to whether or not it will agree to any particular salary sacrificing arrangement, the Employer may issue guidelines through policies and procedures from time to time as to what salary sacrificing arrangements are acceptable to the Employer including the chosen provider.
- (c) In the event that changes in legislation, ATO rulings or determinations remove or alter the Employer's capacity to maintain the salary sacrificing arrangements pursuant to this Agreement, the Employer will be entitled to withdraw from these arrangements by giving reasonable notice to each affected Employee.
- (d) It is the responsibility of the Employee regarding their tax obligations and liabilities resulting from any salary sacrifice or other payments they choose to make.

Part 6 – Allowances

28. HIGHER DUTIES

An Employee, who, for a period of five or more consecutive working days performs the duties of a position higher than that in which she/he is normally employed, shall be paid for the full period she/he is performing such duties, the minimum rates prescribed for such higher position. Where an Employee is being paid at the ordinary rate prescribed for a higher position (**Higher Ordinary Rate**), the calculation of overtime and penalty rates during such higher duties period will be applied to the Higher Ordinary Rate.

29. IN CHARGE ALLOWANCE

- (a) A Level 1 nurse who assumes the in-charge role of a clinical or management of a unit on any one day or shift will be paid an allowance, as set out in Schedule 2, per shift.
- (b) This allowance is not payable where a Level 2 Nurse assumes the in-charge role of a clinical or management unit.

30. MEAL ALLOWANCE

- (a) Where the duties of an Employee require him/her to travel from his/her headquarters and he/she is more than 16 kilometres therefrom at his/her normal meal hour, that Employee shall, be reimbursed relevant meal costs incurred, provided that relevant receipts are provided.

31. POST GRADUATE ALLOWANCE

- (a) A Registered Nurse or Registered Midwife who holds;
 - (i) a hospital certificate or graduate certificate;
 - (ii) a post graduate diploma or a degree (other than a nursing under graduate degree or a base qualification required for registration), excepting that a Registered Midwife that holds undergraduate degrees in both nursing and midwifery, or a bachelor of nursing and a post graduate qualification in midwifery, will be entitled to a qualification allowance subject to the provisions of this clause.

will be paid, in addition to their salary, the applicable allowance as set out below – subject to the provisions of this clause.

- (b) Only one qualification allowance will be paid for each Employee. It must be demonstrated that the qualification must be relevant to the current area of practice and is being utilised. If an Employee has two relevant qualifications, the highest post-graduate allowance applicable will be paid.
- (c) Qualification Allowances
 - (i) Hospital/Graduate Certificate (or equivalent) 4% of the hourly rate of pay.
 - (ii) A Post Graduate Diploma or Degree (or equivalent) 6.5% of the hourly rate of pay.
 - (iii) Masters or Doctorate 7.5% of the hourly rate of pay.

-
- (d) The post graduate allowance will be taken into account in the calculation of overtime and annual leave payments.

32. PRECEPTOR ALLOWANCE

A level 1 or 2 Registered Nurse or Enrolled Nurse who acts as a preceptor will receive a payment per hour as set out in Schedule 2 whilst acting in this role subject to the Calvary Health Care Tasmania Preceptor Program being approved by the Director of Clinical Services.

33. TRAVELLING AND FARES

Where the Employer has approved intrastate or interstate travel by the Employee, the Employee will be reimbursed all reasonable costs associated with such travel. Where practicable, the Employee is to provide travel arrangements, including mode of transport and accommodation bookings, prior to the actual travel.

34. UNIFORMS AND PROTECTIVE CLOTHING

Employees required by the Employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to Employees.

35. LEAD APRON ALLOWANCE

Where an Employee is required to wear a lead apron in the performance of radiographic duties such Employee shall be paid an allowance as set out at Schedule 2 per hour or part thereof for such time spent wearing the lead apron. This allowance is subject to the approval of the Nurse Unit Manager.

36. ENROLLED NURSE ADVANCED DIPLOMA ALLOWANCE

An Enrolled Nurse who holds an advanced diploma hospital shall be paid, in addition to their salary, an allowance of 4% of the ordinary hourly rate. It must be demonstrated that the qualification must be relevant to the current area of practice and is being utilised. This allowance shall be taken into account in the calculation of overtime and annual leave payments.

Part 5 - Leave and Public Holidays

37. ANNUAL LEAVE

(a) Period of leave

(i) Day workers

For each year of continuous service with the Employer, a permanent Employee is entitled to 4 weeks of paid annual leave.

(ii) Shift workers – Additional week of annual leave

(1) In addition to the leave prescribed in sub-clause (i) above, shift workers, (as defined hereunder) will be entitled to an additional one week of paid annual leave. For the purposes of the NES and this clause a shift worker is defined as an Employee who:

(A) is regularly rostered to work over seven days of the week; and regularly works weekends; or

(B) works not less than 20 weekend ordinary shifts (or any combination of Saturdays and Sundays to a total of not less than 20 shifts) in any one leave year; or

(C) Where an Employee with at least 12 months' continuous service is engaged for part of the 12-monthly period as a shift worker (as per 37(a)(ii)(1)(A) or (B)), he//she shall be entitled to have the period of annual leave as per sub-clause (a)(1) applied on a pro-rata basis.

(2) This entitlement to additional leave hours as set out above shall be pro-rata for part-time Employees.

(b) An Employee's 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.

(c) Annual leave exclusive of public holidays

Subject to this clause the annual leave prescribed by this clause shall be exclusive of any of the holidays prescribed by Clause 41 - Public Holidays, and if any such holiday falls within an Employee's period of annual leave and is observed on a day which in the case of that Employee would have been an ordinary working day there shall be added to that period of annual leave time equivalent to the ordinary time which the Employee would have worked if such a day had not been a holiday.

(d) Time of taking leave

(i) Paid annual leave may be taken for a period agreed between an Employee and the Employer. The Employer must not unreasonably refuse to agree to a request by the Employee to take paid annual leave. Notwithstanding the provisions of this subclause, the Employer may direct an Employee to take a period of annual leave in accordance with subclause 37(d)(ii) and (l).

-
- (ii) Annual leave shall be given at a time fixed by the Employer when an Employee has accrued more than 8 weeks (for a day worker) and 10 weeks (for shiftworker) of accrued annual leave. Any direction to take annual leave the Employer must be given with not less than eight weeks' notice to the Employee, provided:
- (1) the Employee will first be given a reasonable opportunity to submit a plan to reduce their total annual leave accrued balance to not more than 6 weeks within a period of six months (**leave reduction plan**);
 - (2) the Employer will not unreasonably refuse to agree to an Employee's annual leave reduction plan which includes saving leave for an extended vacation within 12 months of the date of agreement to the leave reduction plan. The agreement is to be in writing and signed by both the Employer and Employee.
 - (3) the Employee cannot be directed to take annual leave where such direction would result in the Employee being directed to reduce the accrued leave to less than 6 weeks.
- (e) Payment for period of leave
- (i) Employees will be paid at the Employee's ordinary rate of pay for the ordinary hours of work in the period. Employees may request in writing that before going on leave, such leave be paid in advance on the last pay period before going on leave, otherwise the leave will be paid in the normal pay fortnights for the period of such leave.
 - (ii) Payment calculated in accordance with the provisions of this clause should be made for the full weeks of leave taken at the time.
- (f) Proportionate leave on ending service
- If, when the employment of an Employee ends, the Employee has a period of untaken paid annual leave, the Employer must pay the Employee the amount that would have been payable to the Employee had the Employee taken that period of leave.
- (g) Annual leave loading
- (i) In addition to their ordinary pay, an Employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary rate of pay.
 - (ii) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
 - (1) an annual leave loading of 17.5% of their ordinary rate of pay; or
 - (2) the weekend and shift penalties the Employee would have received had they not been on leave during the relevant period.
- Provided always that such allowance shall be calculated on the basis of a maximum period in any one leave year of four weeks' annual leave in the case of a day worker and five weeks' annual leave in the case of a shift worker and Nurse Unit Manager.
- (h) Leave allowed before due date
- The Employer may allow annual leave to an Employee before the right thereto has accrued due but where leave is taken in such a case a further period of annual leave

shall not commence to accrue until after the expiration of the 12 months in respect of which annual leave had been taken before it accrued.

(i) Level 3 Nurse Unit Managers

- (i) All level 3 Nurse Unit Managers (NUM) shall receive five (5) weeks' annual leave per annum in recognition of the requirements of the position and some out-of-hours work required.
- (ii) The additional one (1) week's leave is in lieu of any overtime payments that may otherwise be payable under the Agreement provided that all overtime worked by NUMs in excess of 38 hours per annum shall be paid as per clause 20(b)(i)(1), (2) or (3) of the Agreement, as applicable.
- (iii) Notwithstanding (ii), any overtime undertaken as clinical duties (as defined herein) shall be paid as per clause 20(b)(i)(4) or (5) of the Agreement, as applicable. Clinical duties, for the purposes of this subclause, means where the NUM performs duties on a ward or unit (in addition to their rostered ordinary hours), related to, involving or concerned with the direct observation and treatment of patients.
- (iv) NUMs may rotate and may be redeployed within the Hospital Campuses by mutual agreement.

(j) Pay in lieu of an amount of annual leave

- (i) Upon receipt of a written request by an Employee, the Employer may authorise the Employee, in a separate written agreement, to receive pay in lieu of an amount of annual leave.
- (ii) Paid annual leave must not be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
- (iii) Where an Employee forgoes an entitlement to take an amount of annual leave, the Employee must be paid at least the full amount that would have been payable to the Employee had the Employee taken the leave that the Employee has forgone.

(k) Other periods of leave

If the period during which an Employee takes paid annual leave includes a period of personal leave, carer's leave, compassionate leave or community service leave, the Employee is taken not to be on paid annual leave for the period of that other leave or absence.

(l) Annual leave during close down periods

- (i) It is noted that the last week of December and the month of January are times of less activity for the Employer, thereby resulting in a shut-down or partial shutdown, of certain areas and a significant curtailment of services in other areas at the Employer's hospitals.
- (ii) Management will consult with staff a minimum of 8 weeks beforehand concerning changes to rosters and redeployment options (as set out at subclause (iii)) or the use of leave, over the period(s) set out at (i) above,

bearing in mind the operational requirements of the hospitals.

- (iii) Where there are no redeployment options, management reserves the right to direct employees to utilise up to two weeks (up to 3 weeks in the case of St James ward only) of their accrued leave entitlement over the period(s) set out at (i) of this clause, provided that such direction is reasonable.
- (iv) Where an Employee does not have sufficient accrued annual leave for these period(s), the Employee may be required to take annual leave in advance where such requirement is reasonable. Alternatively, Employees may elect to take leave without pay for all or part of the shut-down period(s). Additionally, employees may utilise banked time in lieu of overtime and accrued days off for all or part of the shutdown period(s).
- (v) Notwithstanding the provisions at Clause 37(d), the provisions set out for the Annual leave during close down periods provision will apply. Nothing in this clause prevents an Employee from being on call during the close-down period(s) where mutually agreed between the Employer and the Employee.
- (vi) Notwithstanding the provisions set out at subclause (i) and (ii) above, in unforeseen and pressing circumstances, periods of less activity for the Employer may arise – resulting in shutdowns or partial shutdowns. The minimum 8 week consultation period set out at subclause (ii) will be reduced to one week for shutdowns (or partial shutdowns) which are as a result of circumstances beyond the Employer's control, including but not limited to Government health directives or other state of emergency directives.

38. PURCHASED LEAVE

- (a) The Employer and an employee (other than a casual employee) may agree to a Purchased Leave arrangement to fund extended periods of leave that would have otherwise been unpaid.
- (b) Applying for Purchased Leave
 - (i) An application for Purchased Leave will include the dates for the period of leave and will be subject to approval at the absolute discretion of the Employer.
- (c) Accruing Purchased Leave
 - (i) Purchased Leave will operate by way of an employee authorising the Employer to deduct a portion of their earnings each fortnight and accrue that amount to be later used for a period of leave that would otherwise have been unpaid.
 - (ii) The Employer will calculate the value of the period of leave and then deduct from the employee's fortnightly pay equal instalments to fund the period of Purchased Leave. Provided that if an employee does not earn enough in their fortnightly pay to cover the deduction (For example, through a change in the employee's minimum guaranteed hours or the taking of leave without pay), the Employer is not required to make up the shortfall in earnings.
- (d) Taking Purchased Leave

-
- (i) Unless varied or terminated in accordance with the remainder of clause (e), an employee will take Purchased Leave on the dates agreed to at the time of approval.
 - (ii) Purchased Leave will be paid to the employee at an hourly rate that fully utilises the accrued deductions. No other penalty rates, loadings, allowances or other like payments will apply.
 - (iii) Subject to Superannuation legislation, Superannuation will be paid (where applicable) on the pre-deducted earnings and not at the time of taking the Purchased Leave.
- (e) Variations, Cancellations and Termination
- (i) Subject to subclause (e)(ii), where an Employee seeks a variation to agreed purchased leave, the variation is subject to the prior approval of the Employer. If approval is granted, the Employer will re-calculate the value of the period of leave and adjust the deductions from the employee's earnings accordingly.
 - (ii) An employee may cancel a Purchased Leave arrangement by giving the Employer no less than 4 weeks written notice prior to the period of Purchased Leave.
 - (iii) Upon cancellation of a Purchased Leave arrangement or the termination of the employee's employment, the Employer will pay the accrued and unused Purchased Leave money back to the employee in the next available pay period (where practicable).
 - (iv) This clause shall apply to all new Purchased Leave arrangements made after the approval of this Agreement. Furthermore, employees who have not used existing purchased leave arrangements (i.e. those in place at the time the Agreement comes into operation) within a 12 month period from the date of operation of the Agreement it shall be paid out their purchased leave at rate in which it was accrued/purchased.

39. PERSONAL/CARER'S LEAVE

- (a) Subject to the following limitations and conditions an Employee shall be entitled to personal leave on full pay calculated by allowing 152 rostered ordinary hours of work in the case of the 38 hour per week Employees for each year of continuous service, less any personal leave on full pay already taken. The paid leave entitlement as prescribed herein shall be pro-rata based on the ordinary hours worked by the Employee. For clarity, an Employee (excluding a Casual Employee) is entitled to the paid personal/ carer's leave set out herein, subject to the accrual being no less than the NES.
 - (i) An Employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the Employee's ordinary hours of work, and accumulates from year to year.
 - (ii) An Employee shall not be entitled to personal leave on at the ordinary rate for any period in respect of which such Employee is entitled to workers' compensation.

-
- (iii) An Employee shall be required to submit a registered health practitioner's certificate for any personal leave absences, provided that Employees shall be allowed 3 single days of personal leave per fiscal year without certification or statutory declaration and those days may be taken at any time including either side of days off or RDOs. Statutory Declarations may be used in lieu of medical certificates for access to certified personal and carer's leave.
 - (iv) Each Employee shall notify her/his Employer of an absence from work due to illness or injury prior to the commencement of her/his rostered shift or as soon as practicable thereafter and shall, as far as possible, inform the Employer of the estimated duration of the absence.
 - (b) The Employer shall not change the rostered hours of work of an Employee fixed by the roster or rosters applicable to the 14 days immediately following the commencement of personal leave merely by reason of the fact that she or he is on personal leave.
 - (c) Part-time Employees – A part-time Employee shall be entitled to personal/carer's leave on a pro-rata basis. Such entitlements shall be subject to all the above conditions applying to full-time Employees.
 - (d) Subject to the provisions of a satisfactory health practitioner's certificate and personal leave being due, paid annual leave or long service leave shall be re-credited where an illness occurs during the period of paid annual leave or long service leave; provided that the period of leave does not occur prior to retirement, resignation or termination of services.
 - (e) An Employee, other than a casual Employee, with responsibilities in relation to their immediate family (as defined) or member of their household, who needs the Employee's care or support, shall be entitled to use, in accordance with this subclause, any current or accrued personal leave entitlement, for absences to provide care or support for such persons when they are ill/ injured or in the case of an unexpected emergency. Such leave may be taken for part of a single day.
 - (f) The Employee shall, if required, establish, either by production of a health practitioner's certificate or statutory declaration, that leave is required in order to provide care or support for a member of the Employee's immediate family or household.
 - (g) The entitlement to use personal leave in accordance with this subclause is subject to:
 - (i) The Employee providing care or support to the person concerned; and
 - (ii) The person concerned being a member of the Employee's immediate family or household (as defined in this Agreement).
 - (iii) An Employee must give the Employer notice of the taking of leave under this Clause. The notice must be given to the Employer as soon as practicable (which may be a time after the leave has started) and must advise the Employer of the period, or expected period, of the leave.
 - (h) Unpaid Carer's Leave

An Employee, including a casual Employee, shall be entitled to up to two days unpaid carer's leave per occasion.

40. COMPASSIONATE LEAVE

- (a) An Employee is entitled to 3 days of compassionate leave for each occasion (a *permissible occasion*) when:
 - (i) a member of the Employee's immediate family, or a member of the Employee's household:
 - (1) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - (2) sustains a personal injury that poses a serious threat to his or her life; or
 - (3) dies.
 - (ii) A child is stillborn, where the child would have been a member of the Employee's immediate family, or a member of the Employee's household, if the child had been born alive.
 - (iii) the Employee, or the Employee's spouse or de facto partner, has a miscarriage.
- (b) An Employee may take compassionate leave for a particular permissible occasion if the leave is taken:
 - (i) to spend time with the member of the Employee's immediate family or household who has contracted or developed the personal illness, or sustained the personal injury, referred to in subclause (a); or
 - (ii) after the death of the member of the Employee's immediate family or household or the stillbirth of a child referred to in subclause (a).
 - (iii) after the employee, or the employee's spouse or de facto partner, has the miscarriage referred to in subclause (a).
- (c) An Employee may take compassionate leave for a particular permissible occasion as a single continuous 3 day period; or 3 separate periods of 1 day each; or any separate periods to which the Employee and the Employer agree.
- (d) 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.
- (e) If, in accordance with this Clause, 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. For casual Employees, compassionate leave is unpaid leave.
- (f) The Employee, if required by the Employer, shall supply relevant evidence of the requirement for such leave. Such evidence may include a requirement to supply a medical certificate.

41. PUBLIC HOLIDAYS

- (a) All Employees, other than shift workers and casual Employees, shall be entitled to the following public holidays without deduction from their weekly wages:

-
- (i) Christmas Day, Boxing Day, New Year's Day, Australia Day, Cup Day (half day), Eight Hours Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day, Recreation Day (Launceston only); Hobart Regatta Day (applies to South - all parts of Tasmania south of and including Oatlands and Swansea excluding Bronte Park, Catagunya, Strathgordon, Tarraleah, Wayatinah and the West Coast) or such other day as may be observed in the locality in lieu of any of the aforementioned holidays and the Tasmanian *Statutory Holidays Act 2000* as amended.
 - (ii) The half-day Launceston Cup Day shall mean one half of any ordinary rostered shift on that day.
 - (b) Show day means not more than one local show day observed on an Employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the Employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the Employee and the Employer.
 - (c) Payment for the holidays mentioned above which are taken and not worked, shall be at the ordinary rate for the hours which would have applied to the Employee concerned, when if it were not for such holiday, he/she had been at work.
 - (d) Where an Employee is required to work on a public holiday set out at (a), either for part or the whole of such day, the Employee will be paid as follows:
 - (i) A day worker will be paid an ordinary days' pay (paid at the ordinary rate) plus an additional overtime penalty rate of time and a half the ordinary rate - for time worked on a public holiday;
 - (ii) A shift worker will be paid for such public holiday work at the rate of double time and a half the ordinary rate
 - (iii) Where requested by a permanent shift worker and on the written approval of the Employer, in lieu of the payments set out at (d)(ii) an Employee may:
 - (1) be paid for all time worked on the public holiday at the rate of time and a half the ordinary rate; and
 - (2) accrue additional annual leave at the ordinary rate for the rostered shift. Such additional annual leave will not attract leave loading.
 - (iv) Casual Employees will be paid at the rates prescribed at clause 12(c)(iii)(2) of the Agreement.
 - (e) Public Holidays occurring on rostered days off
 - (i) All full-time Employees will receive a day's ordinary pay (at the ordinary rate) for public holidays that occur on their rostered day off except where the public holidays fall on Saturday or Sunday with respect to Monday-Friday employees.

42. PARENTAL LEAVE

- (a) Employees are entitled to parental leave in accordance with the provisions of the Act, as amended.
- (b) Full-time Employees and permanent part-time Employees are eligible for paid

parental leave in accordance with the following provisions:

- (i) Permanent Employees are eligible for paid parental leave when they have completed at least forty (40) weeks of continuous service prior to the expected date of birth or prior to the date of taking custody of the child.
- (c) Employees who are eligible for paid parental leave are entitled to such leave as follows:
 - (i) Paid Leave
 - (1) Paid Primary Carer Parental Leave – an eligible Employee is entitled to a combined total of fourteen (14) week's paid primary carer parental leave at ordinary pay from the date the leave commences.
 - (2) In accordance with s.73 of the Act, birth related leave may commence up to six weeks prior to the expected date of birth. It is not compulsory for an Employee to take this period off work. However, where an Employee decides to work during this period, if requested by the Employer, the Employee shall provide a statement from her medical practitioner or midwife to the effect that continuing employment until the date of birth is not a risk to the Employee or the unborn child.
 - (3) Paid Partner Parental Leave – an eligible Employee is entitled to one (1) week's paid partner leave in any one year at the ordinary pay which must commence within four weeks of the birth of the child (Eligible Employees will be as defined in the Act).
 - (4) Paid Adoption Leave – an eligible Employee is entitled to paid adoption leave of fourteen (14) weeks from and including the date of taking custody of the child.
 - (5) The paid leave set out above is to be taken during the course of the applicable unpaid parental leave period. For clarity, the paid leave does not extend the period of unpaid parental leave to which the employee is entitled under the Act.
 - (6) Such leave may be paid:
 - (A) On a normal fortnightly basis;
 - (B) In advance in a lump sum;
 - (C) At the rate of half pay over a period of twenty-eight (28) weeks on a regular fortnightly basis.
 - (D) Annual and/or long service leave credits can be combined with periods of maternity leave or adoption leave on half pay to enable an Employee to remain on full pay for that period.
 - (ii) Commonwealth Government scheme

The amount of paid leave provided in this Agreement shall not be reduced in terms of its monetary value by the current Paid Parental Leave Act 2010 provisions as in operation at the date this agreement comes into operation.
 - (iii) Unpaid Parental Leave

-
- (1) An Employee's entitlement to unpaid parental leave is in accordance with the Act.
 - (2) An Employee who has once met the conditions for paid primary carer parental leave and/or paid adoption leave will not be required to again work the 40 weeks' continuous service in order to qualify for a further period of paid maternity leave or adoption leave; unless:
 - (A) There has been a break in service where the Employee has been re-employed or re-appointed after a resignation, medical retirement or after her services have been otherwise dispensed with; or
 - (B) The Employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include personal leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the Workers' Rehabilitation Compensation Act, as amended.
 - (C) An Employee who intends to proceed on maternity or partner leave should formally notify the Employer of such intention as early as possible, so that arrangements associated with the absence can be made. Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.
 - (D) In the case of notification of intention to take adoption leave, due to the fact that an Employee may be given little notice of the date of taking custody of a child, Employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify their Employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.
 - (E) After commencing paid primary carer parental leave or adoption leave, an Employee may vary the period of her maternity leave or adoption leave, once, without the consent of the Employer and otherwise, with the consent of the Employer. A minimum of four weeks' notice must be given, although an Employer may accept less notice if convenient.
 - (F) Any person who occupies the position of an Employee on parental leave must be informed that the Employee has the right to return to her former position. Additionally, since an Employee also has the right to vary the period of her maternity leave or adoption leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should also be set down clearly, to a fixed date or until the Employee elects to return to duty,

whichever occurs first (Maximum Term Contract).

- (G) When an Employee has resumed duties, any period of full pay parental leave is counted in full for the accrual of annual and long service leave and any period of maternity leave or adoption leave on half pay is taken into account to the extent of one-half thereof when determining the accrual of annual and long service leave.
- (H) Except in the case of Employees who have completed fifteen years' service the period of parental leave without pay does not count as service for long service leave purposes. Where the Employee has completed fifteen years' service the period of parental leave without pay shall count as service for long service leave purposes provided such leave does not exceed six months.
- (I) Parental leave without pay does not count as service for incremental purposes. Periods of parental leave on full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.
- (J) Where public holidays occur during a period of paid parental leave, payment is at the rate of parental leave received, that is the public holidays occurring in a period of full pay parental leave are paid at the full rate and those occurring during a period of half pay leave are paid at the half rate.
- (K) If because of an illness associated with her pregnancy an Employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.
- (L) Where an Employee is entitled to paid primary carer parental leave, but because of illness, is on personal leave, annual leave, long service leave, or personal leave without pay prior to the birth, such leave ceases six weeks prior to the expected date of the birth. The Employee then commences primary carer parental leave with the normal provisions applying.
- (M) In the event of a miscarriage, any absence from work is to be covered by the current sick leave provisions.
- (N) In the case of stillbirth, outside the circumstances set out at subclause 42(e), an Employee may elect to take personal leave, subject to the production of a medical certificate or may otherwise be entitled to compassionate leave in accordance with clause 40.
- (O) An Employee who gives birth prematurely, and prior to proceeding on primary carer parental leave, shall be treated as being on primary carer parental leave from the date leave is commenced to have the child. Should an Employee return

to duty during the period of paid primary carer parental leave, such paid leave ceases from the date duties are resumed.

(d) Return to Work Guarantee

(i) On ending unpaid parental leave, an Employee is entitled to return to:

(1) The Employee's pre-parental leave position; or

(2) If that position no longer exists – an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.

(e) Special Parental Leave

(i) An Employee eligible for paid parental leave in accordance with clause 42(c), who gives birth to a stillborn child (at or after 20 weeks gestation) or who gives birth to a live baby who subsequently dies, during or before the period of intended leave, will be entitled to 12 weeks paid leave provided by this Agreement.

(ii) The Employee must as soon as practicable give notice to the Employer of the taking of leave advising the Employer of the period, or expected period, of the leave.

(iii) In addition to the paid leave set out at (i), the Employee may be entitled to unpaid special parental leave in accordance with the NES.

(iv) If an Employee takes leave for a reason outlined in paragraphs 42(e)(i) and 42(e)(iii), the Employer may require the Employee to provide evidence that would satisfy a reasonable person or a certificate from a registered medical practitioner.

43. LONG SERVICE LEAVE

The provisions of the *Long Service Leave Act 1976* (as amended) will apply to Employees covered by this Agreement.

44. PROFESSIONAL DEVELOPMENT

(a) Each full time nurse (pro rata, for part time nurse) is entitled to access up to 4 days' paid leave for the purposes of attendance at approved conferences/ seminars. Each application will be assessed on its merits in the context of the applicability of the conference/ seminar, the number of other similar applications and the resources available to the Employer.

(b) The time and manner of taking any entitlement under this provision is to be mutually agreed between the Employer and the Employee and the course and means of dissemination of conference/seminar information is to be approved by the NUM. Should mutual agreement not be possible on repeated occasions this matter is to be referred to the Director of Clinical Services or their delegate for resolution under the dispute resolution process.

(c) Reasonable travel, accommodation and registration costs may be paid by the Employer, when the Employer selects and/or approves the Employee for the conference/seminar.

-
- (d) All staff granted conference/seminar leave will be required to provide an in-service to other staff on the learning from the leave and to provide a report to the Director of Clinical Services on the learning's from the conference/seminar.

45. MANDATORY TRAINING

All Employees have a responsibility to maintain and upgrade their skills commensurate with the requirements of their position. Mandatory training will be provided and undertaken at the hospital in paid time. Attendance at mandatory training will be paid at the ordinary rate subject to the following:

- (a) Where such training is undertaken during the course of the Employee's rostered ordinary shift (Ordinary Shift) – the Employee will be paid, in addition to the ordinary rate, any applicable shift or weekend penalty rate (or casual loading in the case of a casual Employee) that is payable on the Ordinary Shift;
- (b) All e-learning will be rostered/undertaken during the Employee's Ordinary Shift;
- (c) For training completed outside of the Employee's ordinary rostered hours - the Employee will be paid a minimum period of 1 hour or the duration of the training, whichever is the greater, at the applicable overtime penalty rate.

46. REPRESENTATIVES LEAVE

- (a) Leave to attend trade union and union delegate courses/seminars shall be as follows:
 - (i) To a maximum of 3 days per year (1 January to 31 December) for each campus for the totality of all applications of paid trade union, union delegate training leave, shall be available for the purpose of trade union training, union delegate courses and seminars provided that:
 - (1) the scope, content and level of the courses are directed to the enhancement of the operation of the settlement of dispute/dispute settlement procedure/s;
 - (2) two weeks' notice is provided to the Employer;
 - (3) the approval of leave must have regard to the operational requirements of the Employer;
 - (4) this leave shall be paid at the ordinary time rate of pay.
 - (ii) Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

47. 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.

48. LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE

- (a) An employee may take paid Family and Domestic Violence leave if:
- (i) The employee is experiencing family and domestic violence; and
 - (ii) The employee needs to do something to deal with the impact of the family and domestic violence leave; and
 - (iii) It is impractical for the employee to do that thing outside the employee's ordinary hours of work.
- (b) The following definitions apply for the purpose of this clause:
- (i) **Family and domestic violence** is violent, threatening or other abusive behaviour by a close relative of an employee, member of an employee's household, or a current or former intimate partner of an employee that:
 - (1) seeks to coerce or control the employee; and
 - (2) causes the employee harm or to be fearful.
 - (ii) A **close relative** of the employee is a person who:
 - (1) is a member of the employee's immediate family; or
 - (2) is related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
 - (iii) The **full rate of pay** has the same meaning as the Act.
- (c) Entitlement to Calvary Paid Family and Domestic Violence Leave Scheme
- (i) The Calvary Family and Domestic Violence Leave Scheme's objective is to provide an extended entitlement to the amount of Family and Domestic Violence Leave under the NES.
 - (ii) Those employees eligible for Family and Domestic Violence leave in accordance with the NES are entitled to Family and Domestic Violence in accordance with the terms of this clause.
 - (iii) The amount of paid Family and Domestic Violence Leave an employee is entitled to under this Agreement shall be twenty days, inclusive of the entitlement under the NES.

NOTE 1: Nothing in this clause is intended to discourage or prevent an employee requiring more support to request additional paid Family and Domestic Violence Leave or any other form of support an employee may need from Calvary.

- (d) The amount of Family and Domestic Violence Leave under clause 48(c) shall:
- (i) be available in full at the start of each 12 month period of the employee's employment; and
 - (ii) not accumulate from year to year; and
 - (iii) will not be paid out at the end of employment
- (e) Payment of Calvary Paid Family and Domestic Violence Leave Scheme

-
- (i) Employees will be paid at their full rate of pay based on their classification and pay point, calculated on what the employee would have received if they worked the period rather than take the leave.
 - (ii) For a casual employee, the leave is paid on the hours of work which were offered and the employee accepted prior to the requirement to take Family and Domestic Violence leave.
 - (iii) Family and Domestic Violence Leave may be taken as a single period or separate periods made of whole days/shifts or, where agreed with Calvary, as periods of less than one day/shift.
 - (iv) Family and Domestic Violence Leave shall be counted as continuous service for all purposes under the Act.
 - (v) Calvary may label Family and Domestic Violence Leave with another name/title on an employee's payslip to enable the confidentiality and protection of an employee; provided that Calvary has a measure taken to record the other name/title used to enable the auditing of an employee's payslip, if required.
- (f) Notice and Evidence Requirements

NOTE: These evidence requirements are the same as the NES.

- (i) An employee must give their employer notice of taking Family and Domestic Violence Leave.
- (ii) The notice must be given to Calvary as soon as practicable and must advise Calvary of the period, or expected period, of the Family and Domestic Violence Leave.
- (iii) An employee who has given Calvary notice of taking of Family and Domestic Violence Leave must, if required by Calvary, give Calvary evidence that would satisfy a reasonable person that the leave is taken for the purposes specified in clause 48(a).

NOTE 1: 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.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

49. EMERGENCY SERVICES LEAVE

- (a) In addition to the NES, an Employee who by reason of a natural disaster such as a bushfire or flood:
 - (i) requires time away from work; or
 - (ii) is required to return home before the usual finishing time;
- (b) to ensure their own safety or for the protection of their property, the Employees will, subject to management approval, be able to:

-
- (1) access up to 3 days of paid leave (for any absences on rostered periods of ordinary duty) in any 12 month period;
 - (2) in addition to the paid leave set out at (b)(i) - utilise accrued annual leave, an accrued day off, time in lieu or unpaid leave.

Part 6 – Ending Employment

50. REDUNDANCY

- (a) The parties agree that it is not desirable to lose the services of Employees through redundancy. It is the parties preferred option to seek redeployment and retraining opportunities within the organisation should the occasion arise.
- (b) Commitment to Consult.
 - (i) The parties to this Agreement recognise that redundancy, when it occurs, is both sensitive and traumatic and needs to be handled in a delicate manner.
 - (ii) Where the Employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and the change is likely to have a significant effect on Employees of the Employer, the Employer shall consult with affected Employees in accordance with the consultation regarding change provision of this Agreement.
- (c) Redeployment and Retraining
 - (i) In the event of a position being made redundant, the following shall apply:
 - (1) The Employer will actively explore all internal redeployment opportunities for Employees surplus to requirements.
 - (2) An Employee seeking redeployment may be retrained for an available position on condition that the Employee can demonstrate that he or she possesses the necessary capacity for that position.
 - (3) Where retraining is required, the Employer will provide and pay for any training which the Employer deems necessary for the Employee to perform the duties of the position to which the Employee is being redeployed. The Employee will be entitled to undertake this training during work time.
 - (4) All reasonable attempts will be made to ensure that an Employee's area of choice, hours of work, previous employment classification and previous roster patterns are met.
- (d) Notice of Redundancy
 - (i) The Employer undertakes to provide the maximum possible notice of the need to make a position(s) redundant. In all cases however, the minimum period of notice for Employees subject to termination will be two (2) weeks.
 - (ii) The required period of notice in the event that a position is made redundant is as follows:

Employee's Period of Continuous Service with the Employer	Period of Notice
Not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

The required notice period will be increased by one (1) week if the Employee is over 45 years of age at the time of termination and has completed 2 years' continuous service with the Employer.

- (e) Redundancy Package
 - (i) Where redeployment or retraining opportunities are not available, the separation package to be paid to a redundant Employee is as follows:
 - (1) Redundancies
 - (A) Notice as stipulated in this clause, or payment in lieu thereof
 - (B) 2 weeks' pay for each year of service and pro rata to two weeks for the final uncompleted year of service, providing that such payment is no less than the severance prescribed under the NES.
 - (C) Full payment of all accrued pro rata long service leave entitlements after five years of service.
 - (D) Full payment of all accrued annual leave entitlements including leave loading.
 - (2) A week's full pay shall mean
 - (A) The weekly base rate for the classification; and
 - (B) Any penalties; and
 - (C) Any all-purpose work related allowances.
- (f) All Employees who are made redundant shall be given assistance by the Employer in seeking suitable alternative employment. Such Employees will be granted time off with pay to seek alternative employment or to make arrangements for training or re-training
- (g) Financial Counselling.
 - (i) The Employer undertakes to provide access in paid time for each Employee who is offered a redundancy, or who expresses an interest in a redundancy, to consult a financial adviser. The Employer will pay for the initial cost associated with the financial counselling (up to two sessions) from a financial counsellor agreed to by the Employer and the Employee.
 - (ii) The Employer will provide to each Employee a fully detailed pay statement at the time when the offer of redundancy is made.
- (h) In the event of a permanent position becoming available, the Employer shall take reasonable steps to notify redundant Employees (within 12 months of being made redundant) of such vacancy and the Employee shall be invited to apply.
- (i) Provided that in the case where the Employer facilitates acceptable alternative employment for an Employee, including the transfer of all entitlements, the provisions of this redundancy clause shall not apply.
- (j) Acceptable alternative employment will have been provided where the Employee is transferred to

- (i) a position which reflects the individual skills of that Employee; and
 - (ii) a position which, as a minimum, provides the same financial and employment benefits (including security of employment) as the position which no longer exists.
- (k) Alternative Employment
- (i) Where the Employer obtains acceptable alternative employment for the Employee the severance payment scheme under subclause (e) will not apply. The Employee may otherwise have an entitlement to a severance payment, subject to sections 119 and 120 of the Act.
- (l) Employees Exempted
- (i) This clause shall not apply to:
 - (1) dismissal for serious misconduct;
 - (2) casual Employees;
 - (3) Employees engaged for a specific period of time or for a specific task or tasks; or
 - (4) Employees (other than apprentices) to whom a training arrangement applies and whose employment is for a specified period of time or is limited to the duration of the training arrangement.

51. TERMINATION OF EMPLOYMENT

- (a) Except for summary dismissal, the services of an Employee shall be terminated by notice as prescribed by *the Act* or by the payment of salary in lieu thereof.
- (b) The notice as prescribed under the Act is as follows:

Period of continuous service Notice	Minimum Period of notice
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

- (i) Employees aged 45 years or older will be entitled to an additional one weeks' notice on completion of at least two years continuous service for all Employees other than casuals.
- (ii) No Employee shall, without the consent of the Employer, resign without having given seven days' notice of intention so to do or forfeiting salary earned during the pay period current at the time of resignation; provided that in no circumstances shall the Employee forfeit more than seven days' pay at the rates prescribed for his or her classification, subject to the requirements of s324(1)(b) of the Act.
- (iii) Upon the termination of the services of an Employee, the Employer shall

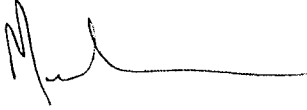
furnish the Employee with a written statement, duly signed by or on behalf of the Employer, setting out the period of the employment and the capacity in which the Employee was employed.

(c) Summary dismissal

The Employer will have the right to dismiss the Employee without notice, where the Employee's employment is terminated because of serious misconduct.

SIGNATORIES

I am authorised to sign this Agreement on behalf of CALVARY HEALTH CARE TASMANIA



Melissa Evans
Regional Chief Executive Officer, Tasmania

SIGNATURE

PRINT NAME AND TITLE

Address: Q1 Building, Level 4, 1 Southbank Boulevard, Southbank Vic 3006

Date: 15/12/2023

I am authorised to sign this Agreement as the nominated employee bargaining representative on behalf of AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (TASMANIAN BRANCH)



SIGNATURE

Emily Shepherd _____

PRINT NAME AND TITLE

Address: 182 Macquarie Street Hobart TAS 7000

Date: 21 December 2023

I am authorised to sign this Agreement as the nominated employee bargaining representative on behalf of the HACSU


SIGNATURE

Robbie Moore State Secretary
PRINT NAME AND TITLE

Address: *11 Clare Street New Town 7008*

Date: *21-12-23*

SCHEDULE 1: ROSTERING ARRANGEMENTS THEATRE AND ENDOSCOPY

1. Coverage

A.1 This appendix applies to all **Theatre and Endoscopy Theatre Nurses**. For clarity, this includes the cardiac catheterization lab. The conditions in this appendix apply to the extent of any inconsistencies with the main body of the Agreement.

2. Hours of work and rosters

2.1 The spread of hours will be 7.00am to 9:30pm, Monday to Saturday and may be extended by mutual agreement – including a 6.30am commencement time by mutual agreement.

2.2 Employees shall be expected to regularly participate in:

- (a) the afternoon shift roster and work a minimum of one afternoon shift per fortnight, excepting Endoscopy Nurses who will be required to work afternoon shifts when rostered to do so (with no minimum afternoon shifts to be worked); and
- (b) the on call roster; and/or weekend roster (where applicable).
For clarity, Endoscopy Nurses employed at Launceston are not expected to participate in the on call roster and therefore do not meet the criteria set out at clause 4.2(a)(ii) to qualify for an additional 1 week of annual leave. Should the Employer's requirements change such that Endoscopy Nurses employed at Launceston meet the criteria set out in clause 2, including 2.2(a) and (b), they will be eligible for an additional 1 week of annual leave.

2.3 Employees will be rostered to work variable shift lengths of 6, 8 and 10 hours, which will be rostered consistent with operating session requirements.

2.4 Shifts of 4 hours or less will be worked by mutual agreement.

2.5 Participation by an Employee on a variable shift length roster will not require the Employee to work any additional days (than a roster based upon an ordinary shift length of 8 hours) in order to fulfil their contracted hours of employment, unless by mutual agreement.

3. Overtime

3.1 Time in lieu of an overtime payment

By mutual agreement, time in lieu of overtime (TOIL) hours may be banked.

Launceston employees only	Time in lieu of overtime hours are banked at the rate of time and one half for a rostered shift greater than 6 and less than 8 hours and double time for shifts greater than 8 hours.
----------------------------------	---

3.2 Overtime – 10 Hour Shifts

<ul style="list-style-type: none">• Launceston employees Employed on or after 1 January 2018• All Hobart employees	Where an Employee is rostered for a 10 hour shift and works beyond the 10 hours, they will be paid overtime (double time) from 8 hours to the completion of the shift.
<ul style="list-style-type: none">• Launceston employees Employed prior to 1 January 2018	Where a 10 hour shift is worked, it will be paid as 8 hours at ordinary time and 2 hours at double time.

4. Annual leave

4.1 Employees may be eligible to accrue a maximum of 6 weeks annual leave per annum, subject to the following:

4.2 Eligibility for five weeks leave

- (a) In addition to the 4 weeks leave prescribed in Clause 37, Annual Leave, Employees will accrue an additional **1 week** of annual leave if:
 - (i) they meet the definition of a **Shift Worker**, as defined in this Agreement at clause 37(a)(ii), or
 - (ii) they work in accordance with the arrangements set out at clause 2 of this Schedule – Hours of Work and Rosters.

4.3 Eligibility for six weeks leave

- (a) If an Employee is entitled to 5 weeks of annual leave in accordance with subclause 4.2 above, the Employee will be entitled to accrue a sixth week of annual leave where the Employee works in accordance with the **On Call Roster** as outlined in subclause (b) below.
- (b) For the purposes of this entitlement the Employee must meet the following conditions over a 12-month period, commencing from the first pay period after 1 July each year, inclusive of any periods of leave in the eligibility period. The minimum requirements are for Employees to be:
 - (i) On call for a minimum of 20 weekdays; and
 - (ii) On call for a minimum of 20 weekend days (Saturday or Sunday); and
 - (iii) Recalled to duty for a minimum of 5 occasions.
- (c) Where an on call period (being a continuous period of on call) referred to at subclause (b)(i) and (ii) spans over two calendar days, it will count:
 - (i) as one day for the purposes of the 20 weekdays or weekends; and
 - (ii) as a weekday or weekend on call according to the calendar day upon which the on call commenced.

4.4 When an Employee requests or agrees to take leave on a rostered 10 hours shift, it will be counted as 10 hours at ordinary time

5. Public Holidays

<p>Payment for working a public holiday</p> <p>Employees who work on the Public Holiday will be paid accordingly:</p>		<ul style="list-style-type: none"> • Time worked will be paid at a rate of double time and a half
<p>Payment for a public holiday, rostered but not worked</p> <p>Employees, where if it were not for the Public Holiday, would have worked the public holiday will be paid ordinary time in accordance with the time in which they would have normally been rostered for that day.</p>		<ul style="list-style-type: none"> • Will be paid at the ordinary rate for time rostered but not worked.

<p>Payment for working a Public Holiday when on call</p> <p>Employees who work on the Public Holiday will be paid accordingly:</p>		<ul style="list-style-type: none"> • Employees working on call on a public holiday will be paid at the ordinary rate for time rostered but not worked. • When employees are recalled to work, they will be paid at a rate of time and a half the ordinary rate for time worked. For clarity, the employee shall receive in the aggregate double time and a half the ordinary rate for such time worked when on call and recalled on a public holiday.
---	--	---

<p>Public Holiday payment and banking when working on a public holiday</p> <ul style="list-style-type: none"> • Employees have the option to bank a day in lieu of when working the public holiday. • Employees may opt in or out of the banking arrangements once per Calendar year. 		<ul style="list-style-type: none"> • Will be paid at a rate of time and a half for time worked • Employees will bank one day of ordinary time.
--	--	--

6. Call Back

6.1 Call back for theatre employees who are on call will be read in conjunction with the Call Back Clause 22(b)

6.2 Except where otherwise specifically provided, an employee recalled to work overtime after leaving the employer's premises (whether notified before or after leaving such premises) shall be paid at the appropriate overtime rate applicable to their salary:

- For the first recall a minimum payment of four (4) hours work; and
- For each subsequent recall a minimum payment of three (3) hours work.

6.3 Time spent in getting to and from work shall be considered to be included as part of the minimum payment applied.

6.4 For the purpose of determining when a theatre employee is eligible for a first or subsequent call back payment, the following 'on call' periods shall stand alone and, subject to Clause 10 (Consultation regarding change), may change from time to time based on operational requirements:

Launceston	<ul style="list-style-type: none"> • Monday to Friday, 6:00 pm to 7:00 am the following day including Saturday; • Saturday 7:00am to 7:00am Monday
Lenah Valley	<ul style="list-style-type: none"> • Monday to Friday 9:00 pm to 7:30 am the following day including Saturday; • Saturday 4:00pm to 8:00am Sunday; • Sunday 8:00am to 8:00pm; • Sunday 8:00pm to 8:00am Monday
St Johns	<ul style="list-style-type: none"> • Monday to Thursday 7:00pm to 8:00am the following day • Friday 4:00pm to 8:00 am the following day; • Saturday 8:00 am to 8:00 am Sunday; • Sunday 8:00am to 8:00am Monday

6.5 Notwithstanding clause 20(e) – Rest Period after overtime, an employee who is recalled to work within three hours of his or her normal starting time shall be paid at overtime rates with a minimum payment of four hours at double time, and then would be paid at ordinary rates for the remainder of that shift, provided that where the employee has not had at least 8 consecutive hours free from duty prior to the recall, such employee will be released from duty no later than 6 hours from the commencement of the recall attendance, without loss of pay.

6.6 Provided that where an employee is recalled to work prior to 5:30am, and where the employee has not had an 8 hour break prior to being recalled to duty, the employee shall be entitled to an eight hour break without loss of pay for ordinary working time occurring during such absence at the cessation of the recall duty, prior to commencing their rostered shift.

6.7 Employees called in where the recall to duty is consecutive with the employees rostered early shift, the employee shall be entitled to an overtime payment for the minimum call back period, with the remaining period of the ordinary rostered shift paid at the relevant ordinary time rate of pay. Overtime provisions will be applied in accordance with the overtime clause where the shift lengths exceed 8 or 10 hours as agreed.

6.8 If on the instructions of the employer such an employee resumes or continues work without having had such eight consecutive hours off duty he/she shall be paid at double time until he/she is released from duty for such period and shall then be entitled to be absent until he/she has eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

6.9 When overtime work is necessary it shall, where reasonably practicable, be so arranged that employees have at least eight consecutive hours off duty between the work of successive days.

SCHEDULE 2: WAGES SCHEDULE

Classification			Date EA comes into Operation	FFPPOA 1.7.24
			hourly (\$)	hourly (\$)
Assistant in Nursing/ Midwifery				
1 st year of service			\$30.73	\$31.19
2 nd year of service/ Cert III Entry level			\$32.73	\$33.22

Classification	FFPPOA 1.7.21	FFPPOA 1.7.22	FFPPOA 1.7.23	FFPPOA 1.7.24
Current hourly rate (\$)	hourly (\$)	hourly (\$)	hourly (\$)	hourly (\$)
		3%	3%	3%
Enrolled Nurse				
1 st year of service (Cert IV Entry)	\$35.00	\$36.05	\$37.13	\$38.25
2 nd year of service (Diploma Entry)	\$36.00	\$37.08	\$38.19	\$39.34
3 rd year of service	\$37.03	\$38.14	\$39.29	\$40.46
Registered Nurse/ Midwife – Level 1				
1 st year of service	\$36.54	\$37.64	\$38.77	\$39.93
2 nd year of service	\$38.18	\$39.33	\$40.51	\$41.72

3 rd year of service	\$39.88	\$41.08	\$42.31	\$43.58
4 th year of service	\$41.61	\$42.86	\$44.14	\$45.47
5 th year of service	\$43.29	\$44.59	\$45.93	\$47.30
6 th year of service	\$45.00	\$46.35	\$47.74	\$49.17
7 th year of service and thereafter	\$46.65	\$48.05	\$49.49	\$50.98
Registered Nurse/ Midwife – Level 2				
1 st year of service	\$48.38	\$49.83	\$51.33	\$52.87
2 nd year of service	\$49.50	\$50.99	\$52.51	\$54.09
3 rd year of service	\$50.60	\$52.12	\$53.68	\$55.29
4 th year of service and thereafter	\$51.71	\$53.26	\$54.86	\$56.50
Clinical Nurse Specialist				
Year 1	\$53.15	\$54.74	\$56.39	\$58.08
Year 2	\$53.64	\$55.25	\$56.91	\$58.61
Registered Nurse/ Midwife – Level 3				
1 st year of service	\$55.12	\$56.77	\$58.48	\$60.23
2 nd year of service	\$56.42	\$58.11	\$59.86	\$61.65
3 rd year of service	\$57.74	\$59.47	\$61.26	\$63.09
4 th year of service	\$59.02	\$60.79	\$62.61	\$64.49
Clinical Nurse/ Midwife – Manager Level 3 (non-managing a clinical unit)				
1 st year of service	\$56.80	\$58.50	\$60.26	\$62.07
2 nd year of service	\$58.11	\$59.85	\$61.65	\$63.50
3 rd year of service	\$59.47	\$61.25	\$63.09	\$64.98
4 th year of service	\$60.80	\$62.62	\$64.50	\$66.44
Clinical Nurse/ Midwife – Manager Level 3				
1 st year of service	\$59.66	\$61.45	\$63.29	\$65.19

2 nd year of service	\$61.03	\$62.86	\$64.75	\$66.69
3 rd year of service	\$62.46	\$64.33	\$66.26	\$68.25
4 th year of service	\$63.85	\$65.77	\$67.74	\$69.77
Registered Nurse/ Midwife Level 3A	\$60.41	\$62.22	\$64.09	\$66.01
Registered Nurse/Midwife Level 4	\$67.54	\$69.57	\$71.65	\$73.80
Nurse Practitioner				
Year 1	\$64.83	\$66.77	\$68.78	\$70.84
Year 2	\$66.42	\$68.41	\$70.46	\$72.58
Year 3	\$68.00	\$70.04	\$72.14	\$74.31

Table 2: Allowances				
Allowance	FFPPOA 1.7.21			
Cl.22 On Call (per hour)		3%	3%	3%
Monday to Friday	\$4.98	\$5.13	\$5.28	\$5.44
Saturday, Sunday and Public Holidays	\$6.41	\$6.60	\$6.80	\$7.00
Cl.35 Lead Apron allowance	\$2.21	\$2.28	\$2.34	\$2.41
Cl.29 In Charge Allowance	\$29.59	\$30.48	\$31.39	\$32.33
Cl.32 Preceptor Allowance	\$4.73	\$4.87	\$5.02	\$5.17

Table 3: Overtime and Meal Allowance				
Overtime Meal Allowance	FFPPOA 1.7.21			
(paid only when a meal is not provided)				
> 1 hr OT	\$13.97	\$14.39	\$14.82	\$15.27
> 4 hrs OT	\$12.60	\$12.98	\$13.37	\$13.77

SCHEDULE 3: CLASSIFICATIONS

Assistant in Nursing/ Midwifery means an employee, other than a Registered Nurse, Registered Midwife or Enrolled Nurse, who provides delegated elements of patient care in a hospital under the supervision and direction of a Registered Nurse, including but not limited to patient hygiene, patient positioning and mobility, and other care related work. Work of an Assistant in Nursing/ Midwifery may also be overseen by an Enrolled Nurse.

Registered Nurse means a practitioner registered with the Nursing and Midwifery Board of Australia (NMBA) through the Australian Practitioner Regulation Agency (Ahpra) under the provisions of the Health Practitioner Regulation National Law (Tasmania) Act 2010 (HPRNL Act), as amended, as a Registered Nurse (RN).

Registered Midwife means a practitioner registered with the NMBA through Ahpra under the provisions of the HPRNL Act, as amended, as a Midwife (RM). The RM has a NMBA approved qualification in midwifery. RMs work with women during pregnancy, labour and birth and provide care to the mother and baby during the post-natal period.

Student enrolled nurse means a student undertaking study to become an enrolled nurse.

Enrolled Nurse means a nurse enrolled as such with the NMBA, through Ahpra, under the provisions of the HPRNL Act, as amended, as an enrolled nurse (EN).

Registered Nurse/ Midwife – Level 1 means a Registered Nurse/ Midwife employee who performs their duties according to their level of competence and under the general guidance of, or with general access to, a more competent RN/RM who provides work related support and direction. An employee at this level is required to perform general nursing duties which include substantially, but are not confined to:

- delivering direct and comprehensive nursing care and individual case management to patients or clients within the practice setting;
- coordinating services, including those of other disciplines or agencies, to individual patients or clients within the practice setting;
- providing education, counselling and group work services orientated towards the promotion of health status improvement of patients and clients within the practice setting;
- providing support, direction and education to newer or less experienced staff, including AIN/Ms EN's, and student EN's and student nurses;
- accepting accountability for the employee's own standards of nursing care and service delivery; and
- participating in action research and policy development within the practice setting.

Registered Nurse/ Midwife - Level 2 means a RN/RM who is appointed as such, and:

- has demonstrated all criteria as defined as a Level 1 RN/RM, and;
- provides support to the NUM and maybe in charge of the ward/unit in the absence of the NUM;
- provides support, direction, and mentorship to Level 1 RN/RM's, EN's, student ENs, student nurses, AIN/Ms and new staff; holds a portfolio as agreed with the NUM which may include but not limited to, staff rosters, auditing, safety and quality standards.

Clinical Nurse Specialist

The Clinical Nurse Specialist (CNS) is a Registered Nurse with a minimum of 4 years' experience in their clinical speciality, who demonstrates a higher level of clinical decision making by interpreting and analysing data and has been appointed as a Clinical Nurse Specialist.

The CNS is a positive role model and mentors and supports less experienced nurses.

- contributes to the ongoing professional development of the speciality by contributing to the education of others in the clinical unit and by ensuring own professional development is

contemporary and evidence informed.

Registered Nurse/Midwife - Level 3 means a RN/RM who is appointed as such, and may be referred to as: Clinical Nurse Consultant or Nurse Unit Manager or Clinical Nurse Educator.

Nurse Unit Manager

A RN/RM appointed to manage a ward or unit. The NUM is responsible and accountable for the physical and human resources required to clinically operate the ward or unit on a daily basis.

Clinical Nurse Educator

Is a RN/RM responsible for the conduct, evaluation and planning of education programmes and/or staff development for a specified group of nurses, or education programmes for patients/clients and others.

Registered Nurse/Midwife - Level 3A means a RN/RM appointed as such who may be referred to as the Hospital Coordinator or After Hours Coordinator and is accountable for the overall provision of safe patient care and the management of resources in the absence of the Director of Clinical Services.

Registered Nurse/Midwife - Level 4 means a RN/RM who is appointed to undertake roles such as but not limited to:

- Quality and Risk Manager,
- Manager Patient Safety and Experience
- Perioperative Services Manager

A RN/RM at this level has greater than 5 years' experience and has the ability to deputise for the Director of Clinical Services. The Level 4 RN/RM may be accountable for a whole of service function or a hospital campus.

Nurse Practitioner is a Registered Nurse with a Masters Degree who is registered with the NMBA as a Nurse Practitioner (NP). A NP can practice independently, at an advanced level and in collaboration with other health practitioners. A NP can diagnose, prescribe medications, order tests and investigations and make referrals to other health professionals.

SCHEDULE 4 PRINCIPLES FOR WORKLOAD MANAGEMENT

The following principles are to be used in each unit/area in order to promote safe, efficient and effective staffing responsive to the acuity needs of patients.

1. Purpose

The purpose of the principles are to promote safe and sustainable staffing arrangements for Employees having regard to the skills, experience and classification of Employees, enabling the delivery of high quality patient care in a safe working environment.

2. CHCT has a duty to allocate and roster nurses/midwives in accordance with a process that is consistent with reasonable workload principles.

2.1 Reasonable workload principles shall include the application of a Work Hours per Patient Day (**WHpPD**) model.

2.2 The following WHpPD model shall be used as a guide to minimum requirements:

- Mental Health: 5 WHpPD
- Medical Ward: 5 WHpPD
- Surgical Ward: 5 WHpPD
- Rehabilitation: 5 WHpPD
- Day Area: 2 WHpPD
- Theatre: Per ACORN Standards

2.2.1 The WHpPD incorporates a proportion of non-nursing hours. An indicative average of the proportion of non-nursing hours is 12% of WHpPD, noting there may be variances based on the unit/ ward speciality and variable care requirements.

2.3 It is acknowledged and agreed by the parties covered by this Agreement, that existing flexibilities in respect of staffing will be maintained. Application of reasonable workload principles will include the collaborative practice at each ward and unit level, between Nursing Administration and the Nurse Unit Manager (NUM) or In-charge Nurse/ Midwife, to determine the clinical needs of the patients for the purposes of staffing in accordance with the WHpPD workload tool, taking into account the following factors:

- Occupancy;
- Clinical assessment of patient needs, including patient acuity;
- The demands of the environment such as ward layout;
- Statutory obligations including workplace health and safety legislation;
- The application of applicable Nurse and Midwife regulatory legislation, professional and national standards and specialty practice standards, where appropriate, in accordance with relevant accreditation requirements
- Reasonable workloads;
- Appropriate skill mix and specialisation
- Availability of support staff
- Patient movements.

2.4 The Employer may in its discretion increase or decrease the WHpPD set out at 2.2 on a temporary basis, for a for a specified period of time, or on an ongoing basis, in response to patient speciality and acuity profile, occupancy changes, government direction to services and/ or changes to health insurance. Employees directly impacted will be notified and advised of the reasons for the change.

2.5 Replacing leave absences

Subject to staffing considerations in accordance with 2.3, where leave absences, including unplanned leave, eg personal leave, are determined by the Employer to require backfill, the following will apply:

- The Employer will, wherever practicable, backfill an absent nurse/ midwife with an equivalent nurse/midwife e.g.: RN with RN, EN with EN.
- Where efforts to backfill the absence with a nurse/ midwife of equivalent classification have been unsuccessful, the Employer will, in the first instance, take steps to backfill the absence with a nurse/midwife of a lower classification, noting the NUM/ In Charge RN must be satisfied that the delivery of high quality patient care in the ward/unit can be appropriately performed by a nurse/midwife of another nursing/midwifery classification within the overall skill mix of the ward/unit (Alternate Backfill). Where Alternate Backfill is unsuccessful the Director of Clinical Services (DCS) or their delegate, working with the NUM/ In Charge RN, will consider operational measures including reallocation of duties, transfer of patients or other operational options to enable a manageable workload in the circumstances.

3. Rostering

- a. The principle of self-rostering applies and this includes requests for specific shifts, days off and ADOs (if applicable), where practicable.
- b. Rostering practices should seek to provide equity in the spread of shifts over the roster period taking into consideration occupancy and clinical requirements.
- c. Employees will be expected to participate in the on-call roster on a voluntary basis.
- d. Shift workers should be available to work days, evenings and night duty.
- e. To assist staff in meeting personal needs as well as satisfying organisational requirements shifts of variable lengths may be rostered in accordance with Schedule 1 of the Agreement or otherwise implemented in accordance with the terms of the Agreement.
- f. The allocation of nurses/ midwives per shift or to shifts may be adjusted according to patient occupancy/dependency by NUM or relevant Co-ordinator before ratification of the roster.
- g. Where practical, a Level 2 Nurse/Midwife is to be rostered on each shift. Where this is not practical, a Level 1 Nurse/ Midwife with appropriate experience shall be rostered. The ratio of 25% of all nursing/ midwifery positions at Level 2 will be maintained for the period of this Agreement, subject to availability (noting skill set requirements).
- h. No more than one Level 2 Nurse/ Midwife shall be rostered on each ward/ unit on each weekend shift subject to unit needs and at the discretion of the NUM of the unit
- i. The NUM or In-charge RN, in consultation with the Hospital Coordinator/ Bed Manager (as delegate to the DCS), will determine skill mix requirements including the number of Enrolled Nurses rostered on each shift, subject to the ward/unit needs...
- j. The NUM or In-charge RN, in consultation with the Hospital Coordinator/ Bed Manager (as delegate to the DCS), will determine the allocation of graduate nurses rostered in the ward/ unit.
- k. Consistent with current practice final ratification and publication of the completed roster is the responsibility of the NUM.

-
- I. All roster changes after the roster is published, shall be in accordance with the following:
 - All changes must be approved on the authorised form.
 - Skill mix is maintained as per the published roster, subject to clause 2.5 of this Schedule.
 - NUM must authorise all changes; in exceptional circumstances the Hospital Coordinator may authorise a change.
 - m. Staff able to work extra shifts and/or who are willing to be placed on-call should notify the NUM/ Hospital Coordinator of their availability. The NUM/ Hospital Coordinator is to be notified if individual staff availability changes
 - n. It is the expectation of Calvary Health Care Tasmania that in accordance with requirements of Nursing and Midwifery Board of Australia, all Registered Nurses/ Midwives will perform at beginning practice level and as such, staff may be redeployed to an area other than their normal unit and at all times this will be within their scope of practice.
 - o. These principles shall apply to all units throughout the Clinical Division.
 - p. Level 2 Registered Nurses in collaboration with the NUM will be provided with non-clinical time to undertake portfolio requirements.
 - q. Ultimate responsibility for staffing and resource allocation is vested with the DCS and Clinical Services Manager (CSM) or their delegate and nothing in this agreement will limit their ability to make adjustments (in accordance with the Agreement provisions) to staffing that reflect case mix requirements and patient needs.
 - (i) Only those staff with current letters of appointment stating special conditions are exempt from "The Principles" outlined above.
 - (ii) Those staff with special conditions confirmed in a current letter of appointment shall have their special conditions reviewed each 12 months. This will provide the Employer and Employee the opportunity to review the reasons for such an agreement and to establish if the reasons are still valid.
 - (iii) In all cases management will attempt to reach agreement with staff who claim not to be able to meet the requirements of "The Principles".
 - (iv) Rostering practices established through self rostering shall not constitute custom or practice or exemption from "The Principles".
 - (v) If all avenues of negotiation with staff to meet "The Principles" do not satisfy the needs of the Hospital then management reserves the right to roster staff to meet such needs in accordance with Agreement provisions.
 - (vi) Those staff without a letter confirming special conditions shall work as rostered in accordance with "The Principles" and the Agreement provisions.
4. Identification, Escalation and Dispute Resolution Procedure
Should any nurse/ midwife or group of nurses/ midwives in any ward or unit feel the workloads are unreasonably heavy, on a regular basis, then the matter will be dealt with in accordance with Clause 14 (Staffing Levels) of this Agreement.

5. Training and Education

CHCT will provide training and education to assist staff in understanding the application of the rostering principles. The training will include;

- Workload management processes utilised by Clinical Nurse Managers (Level 3 RN)
- Resource management across campuses responding to acuity and skill mix changes

6. Consultative Committee

CHCT has established a Workload Management Consultative Committee comprising equal numbers of Employer and union representatives (which may include employee representatives).

6.1 The terms of reference shall be agreed by the parties and shall include, but not be limited to:

(a) the planned occupancy of the unit/ward; and

- the targeted WHPPD and FTE.
- “CHCT Work Hours Tool” reports to be tabled at each Consultative Committee Meeting. Furthermore, direct and indirect nursing hours can be requested by the parties and in that case, will be provided for the consultative committee meeting members on a confidential basis.
- at the completion of each month, the actual WHPPD will be documented.
- the impact of personal leave in respect to WHPPD
- the composition of WHPPD and the comparisons of WHPPD to similar services in Galvary and other private hospitals.

6.2 All parties to the Agreement will engage in and support workload management and the Workload Management Consultative Committee in accordance with this clause in good faith.

IN THE FAIR WORK COMMISSION

FWC Matter No.:
AG2023/5446

Applicant:

Calvary Health Care Tasmania Limited*Section 185 – Application for approval of a single enterprise agreement*

Undertaking- Section 190

I, Mark Douglas, Industrial Relations Manager for Calvary Health Care Tasmania Limited (“Calvary”) give the following undertakings with respect to the *Calvary Health Care – Tasmania Private Hospitals – Nurses and Midwives Enterprise Agreement 2022* (“the Agreement”):

1. I have the authority given to me by Calvary to provide this undertaking in relation to the application before the Fair Work Commission.
2. These undertakings are provided on the basis of issues raised by the Fair Work Commission in the application before the Fair Work Commission.
3. Clause 50(k) of the Agreement shall be read as being replaced in its entirety with the following:

“Where the Employer obtains acceptable alternative employment for the Employee, the Calvary severance payment scheme under subclause (e) will not apply, and any entitlement to severance pay for the Employee will be in accordance with s.119 of the Act. Subject to s.120 of the Act, on application by the Employer, the FWC may determine that the amount of severance pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate. Disputes in relation to this clause may be dealt with in accordance with clause 10 – Dispute Resolution Procedure.”

Signed:



Mark Douglas
Industrial Relations Manager
7 March 2024