



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Japara Administration Pty Ltd
(AG2019/1383)

JAPARA ADMINISTRATION PTY LTD TASMANIAN NURSES AND AGED CARE EMPLOYEES ENTERPRISE AGREEMENT 2018

Aged care industry

DEPUTY PRESIDENT MASSON

MELBOURNE, 6 SEPTEMBER 2019

Application for approval of the Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018.

[1] An application has been made for approval of an enterprise agreement known as the *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Japara Administration Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Employer has provided written undertakings. 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.

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

[4] I note that Clause 32 is inconsistent with the National Employment Standards. Given the National Employment Standards precedence clause at Clause 7 of the agreement, I am satisfied that the more beneficial entitlements of the NES will prevail.

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

[6] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 13 September 2019. The nominal expiry date of the Agreement is 31 December 2021.



DEPUTY PRESIDENT

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Annexure A

IN THE FAIR WORK COMMISSION

FWC Matter No:
AG2019/1383

Applicant:
Japara Administration Pty Ltd (**Japara**)

Section 185 – Application for approval of a single enterprise agreement

UNDERTAKINGS

I, Jennifer Anderson, Industrial Relations Manager, for Japara, give the following undertakings in accordance with section 190 of the *Fair Work Act 2009* with respect to the *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018* (**the Agreement**):

1. Clause 23(4) is amended to include the following additional subclause:

(iv) If, on the termination of the Employee's employment, time off for overtime worked by the employee to which clause 23(4) applies has not been taken, the Employer must pay the Employee for the overtime at the overtime rate applicable to the overtime when worked.
2. Clause 32(7)(b) regarding carer's leave conditions will be deleted and not apply under this Agreement.
3. Clause 19(5) regarding part-time employment for aged care employees will be replaced by the following:

(5) **Aged Care Employees**

(a) *Before commencing employment, the Employer and Employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day (Agreed Hours).*

(b) *Notwithstanding the overtime provisions prescribed at the Overtime Clause of the Agreement, a part time Employee may agree to work in excess of their Agreed Hours at the ordinary time rate of pay, provided that:*

(i) such agreement will be recorded in writing (which may be by electronic means):

(ii) all time worked by a part-time Employee which exceeds 8 hours on a day or afternoon shift (unless the Employee and Employer have mutually agreed to an arrangement where the Employee works a 10 hour shift), or 10 hours on night shift, or 76 hours per fortnight, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the relevant public holiday penalty rates.

(c) *No part-time Employee shall be directed to work in excess of their Agreed Hours at the ordinary rate of pay.*

(d) *Where an Employee works, by agreement, in excess of their Agreed Hours in accordance with this clause, such Employee shall record those additional hours on their timesheet for the corresponding period.*

Jennifer Anderson
Industrial Relations Manager

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.

**JAPARA ADMINISTRATION PTY LTD
TASMANIAN
NURSES AND AGED CARE EMPLOYEES
ENTERPRISE AGREEMENT 2018**

PART A – APPLICATION AND OPERATION

1 TITLE

This agreement shall be called the *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018* ('the Agreement').

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3 DEFINITIONS

For the purposes of this Agreement:

Agreement means the *Japara Administration Pty Ltd Tasmanian Nurses' and Aged Care Employees Enterprise Agreement 2018*

AHPRA means the Australian Health Practitioner Regulation Agency

Casual Employee means someone engaged on an irregular, variable or unpredictable basis or on an as and when needed basis.

Employee means an employee employed by the Employer in the state of Tasmania in a classification set out in this Agreement.

Employer means Japara Administration Pty Ltd

Fair Work Act means the *Fair Work Act 2009* (Cth)

Full time Employee means someone engaged to work for the full weekly ordinary hours as prescribed in this Agreement.

FWC means the Fair Work Commission, the statutory body established under the *Fair Work Act* or any successor organisation established under Commonwealth legislation.

Immediate family member of an Employee means:

- (a) a spouse, de facto partner, child, step child, parent including parent in law and step parent, grandparent, grandchild or sibling of the Employee; or
- (b) a child, step child, parent including parent in law and step parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.
- (c) spouse includes a former spouse.
- (d) 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.

Member of an Employee's household in respect of an Employee means any person or persons who reside, or usually reside, with the Employee.

NAPSA means a Notional Agreement preserving a State Award and has the meaning in the Act

NES means National Employment Standards being the legislated minimum standards for workplace conditions under the Fair Work Act.

Part-time Employee means someone, other than a casual Employee, engaged to work for fewer hours than an equivalent full time Employee.

Union means the Australian Nursing and Midwifery Federation (Tasmania Branch (ANMF) and Health Services Union (Tasmania No 1 Branch) operating as the Health and Community Services Union (HACSU).

Ordinary rate of pay means the ordinary hourly rate of pay set out in (or as calculated in accordance with) Schedule 1 as applicable to an Employee, as adjusted in accordance with clause 14, but does not include overtime, penalty rates, allowances, shift penalties, incentives, bonuses and other ancillary payments of a like nature.

Nursing Definitions:

Afternoon shift means a shift commencing not earlier than 12.00 noon and finishing after 6.00pm on the same day.

Day shift means a shift worked between 6.00am and 6.00pm.

Day worker means an Employee whose ordinary weekly hours are worked between 6.00am and 6.00pm Monday to Friday.

Executive staff means Director of Nursing.

Night shift means a shift commencing on or after 6.00pm and finishing before 7.30am on the following day.

Part-time shift worker means a part-time Employee who holds a position on a roster as prescribed in clause 19 of this Agreement.

Roster means a written roster setting out the names of Employees required to work in accordance with the roster, and the days, dates, times and hours when each rostered Employee is required to work.

Shift worker means an Employee who is required to work rotating shifts in accordance with a roster.

Year of service means 1976 ordinary hours worked, and includes all paid leave.

Aged Care Employee Definitions:

Afternoon shift means a shift commencing at 10.00am and before 1.00pm or commencing at 1.00pm and before 4.00pm.

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.

Day worker means an Employee whose weekly ordinary hours of work are performed between the period 6.00am and 6.00pm on the days Monday to Friday inclusive.

Non-Rostered Employee means an Employee not required to work in accordance with a Roster.

Roster means a work pattern designed for a specific work area for all or any work performed:

- (a) Outside the span of hours;
- (b) Excluding work performed outside the span of hours paid at overtime rates.

Rostered Employee means an Employee required to work in accordance with a roster.

Projected Roster means an Employee's normal roster including penalty shifts for the period of leave.

Rotating roster means a roster that requires an Employee to regularly rotate between day work, afternoon work and night work or any two combinations of them, subject to the following requirements:

- (a) An Employee shall not be required to work night work for more than four weeks, unless by mutual agreement; and
- (b) An Employee shall not be required to work more than two-thirds of their working time on night work, unless by mutual agreement; and
- (c) The daily hours of afternoon or night work allocated to each Employee at any one time shall continue for at least five successive afternoons or nights, unless by mutual agreement.

Night shift means a shift commencing at 4.00pm and before 4.00am or commencing at 4.00am and before 6.00am.

Shift worker means an Employee other than a day worker.

Year of service shall mean 1976 hours of actual service in an approved establishment, including public holidays, paid annual leave, and paid sick leave.

Interpretation

In this Agreement:

- (a) a reference to gender will include the other genders;
- (b) the singular shall include the plural and the plural shall include the singular;
- (c) 'including' and similar words or expressions are not words of limitation;
- (d) the schedules and appendices attached to this Agreement form part of this Agreement; and
- (e) headings are for convenience only and do not form part of the Agreement.

4 COMMENCEMENT DATE AND PERIOD OF OPERATION

- (a) This Agreement shall commence operation from the 7th day after the agreement is approved by the FWC and will remain in place until 31 December 2021 or thereafter in accordance with the Fair Work Act.
- (b) The parties agree that discussions shall commence for a new Agreement no later than three months prior to the nominal expiry date of the Agreement.

5 COVERAGE

This Agreement shall cover:

- (a) Japara Administration Pty Ltd; and
- (b) Nurses and Aged Care Employees employed by Aged Care Services Australia Group Pty Ltd as classified in Schedule 3 of this Agreement employed in Tasmania; and
- (c) subject to the requirements of the Fair Work Act, the ANMF, and HACSU

6 SCOPE OF THE AGREEMENT

The Agreement sets out the minimum terms and conditions of employment for the Employees.

7 RELATIONSHIP TO NES

This Agreement contains terms that are also matters under the NES. It is not the intention of the parties to exclude the NES or any provision of the NES and it is acknowledged that such terms can only operate in the manner and to the extent prescribed by s.55 of the Fair Work Act.

8 POSTING OF THE AGREEMENT

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

9 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 (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 *Fair Work Act 2009*; and
 - (ii) are not unlawful terms under section 194 of the *Fair Work Act 2009*; 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.

PART B – WAGES AND ALLOWANCES

10 SALARIES

- (1) The current ordinary rates of pay are specified in Schedule 1 and apply to each Employee to whom this Agreement applies:
 - b) Ordinary rates of pay (and allowances) as increased by this Agreement are set out at Schedule 1.
 - c) Allowances that are not determined as a percentage of a wage rate under this Agreement shall be increased in accordance with the increases prescribed in Clause 10(1)(b) for the life of this Agreement.
 - d) Any further wage increase shall be at the discretion of the Employer, unless the rate of pay falls below the Modern Award, in such circumstances the rate of pay

shall default to the minimum rate prescribed in accordance with the relevant Modern Award rate.

(2) Nurse Undertaking Post Graduate Training

A Registered Nurse or an Enrolled Nurse, up to and including the classification of Registered Nurse Level 3, while undertaking post diploma or graduate training, shall be paid at the Employee's existing salary rate and will be entitled to normal incremental progression.

(3) Enrolled Nurse Upgrading To Registered Nurse

Enrolled nurses who complete a period of study which qualifies them to seek registration as a registered nurse with the AHPRA shall, if they wish to continue in employment with the Employer, be transferred to a position as a registered nurse if the Employer has such a position available and if the Employee is suitable for the position.

An Enrolled Nurse commencing as a registered nurse shall be paid as a Level 1 year 3 Registered Nurse for their first year of service.

(4) Salary Re-Entry – Registered Nurses

- (a) A Registered Nurse undertaking the re-entry to practice course shall be paid at Registered Nurse Level 1, 1st year of service during course clinical time.
- (b) Subject to (a), such an Employee shall be paid at Registered Nurse Level 1, 2nd year of service for the first year of service of 1976 hours, or two years, whichever comes first.
- (c) Following successful completion of the re-entry program all of the Employee's previous nursing experience shall be recognised upon proof of that past experience.

(5) Salary Re-Entry – Enrolled Nurses

- (a) An Enrolled Nurse undertaking the re-entry to practice course shall be paid at Enrolled Nurse 1st year of service during course clinical time.
- (b) Subject to (a), such an Employee shall be paid at Enrolled Nurse second year of service for the first year of service of 1976 hours, or two years, whichever comes first.
- (c) Following successful completion of the re-entry program all of the Employee's previous nursing experience shall be recognised upon proof of that past experience.

(6) Accelerated Advancement

- (a) Subject to (b) a Registered Nurse Level 1 shall be entitled to progress one increment on that person's first appointment following registration with the AHPRA, or at any time during the person's employment history as a Registered Nurse Level 1, on attaining –
 - (i) registration in another branch of nursing or on another nursing register maintained by the AHPRA where the Employee is working in a particular practice setting which requires the additional registration; or

- (ii) successful completion of a post-registration course of at least twelve months duration if the Employee is required to perform duties to which the course is directly relevant.
- (b) A Registered Nurse Level 1 who has been advanced once in accordance with (a) above shall not be entitled to further advancement under this sub clause.

PROVIDED THAT existing incremental dates shall not be affected by incremental progression in accordance with this sub clause.

11 PAYMENT OF WAGES

- 11.1 Wages will be paid fortnightly, unless otherwise mutually agreed in writing up to a maximum period of one month not more than five days following the end of the pay period. Employees will be paid by electronic funds transfer, as determined by the Employer, into the bank or financial institution account nominated by the Employee.
- 11.2 When notice of termination of employment has been given by an Employee or an Employee's services have been terminated by the Employer, payment of all wages and other monies owing to an Employee will be made to the Employee within three (3) business days of the termination taking effect. The prescribed limit of 3 business days will not apply and payment will be made as soon as reasonably practicable where circumstances outside the control of the Employer frustrates the Employer's ability to meet the 3 business days requirement.
- 11.3 At the time of making payment to the Employee, the Employer shall provide to each Employee a statement, which may be in electronic form, detailing the following information: name and classification of the Employee; the period the pay relates to and the date of payment; the hourly rate of pay; the amount of payment including allowances; the amount of pay deductions; amounts of occupational superannuation contributions; and details of funds into which contributions are being paid.

12 SALARY SACRIFICE

- 12.1 An Employee may make an agreement with the Employer for salary sacrifice.
 - (a) The Employee must specify an amount or a percentage of ordinary time earnings by which his or her salary is to be reduced ("the salary sacrifice").
 - (b) The salary sacrifice will be deducted from the Employee's salary and contributed by the Employer to the Fund each month.
 - (c) The Employer will continue to calculate the superannuation guarantee contributions required by the *Superannuation Guarantee (Administration) Act 1992* on the basis of the Employee's ordinary time earnings before the salary sacrifice is deducted.
 - (d) Salary sacrifice deductions will be made during a period of paid leave and the Employee will receive the rate of pay specified under this agreement less the salary sacrifice deduction.
 - (e) Calculation of salary for the purpose of leave accruals and other payments due on termination of employment shall be calculated on a rate of pay which includes the salary sacrifice contributions.

- (f) The Employee may revoke the salary sacrifice agreement or alter the amount to be deducted on no more than two occasions in each calendar year.
- 12.2 The name of the Fund and the amount of any contributions remitted to the fund, whether superannuation guarantee contributions, salary sacrifice contributions or voluntary contributions must be included in pay slips provided by the Employer to each Employee.

13 SUPERANNUATION

- 13.1 The Employer shall make superannuation contributions to an Employee's Fund for the benefit of the Employee at such amount as is required so as to avoid the Employer being required to pay the superannuation guarantee charge under the Superannuation Law with respect to that Employee.

'The Fund' for the purpose of this Agreement shall mean:

- (a) Health Employees Superannuation Trust of Australia ('**HESTA**') established and governed by a trust deed 23 July 1987, as may be amended from time to time, and includes any superannuation scheme which may be made in succession thereto;
 - (b) First State Superannuation Scheme; or
 - (c) Any other complying fund upon a request from the Employee and with the consent of the Employer.
- 13.2 The Employer shall participate in accordance with the trust fund deeds. The Employer shall make application to the Fund to become a participating Employer in the Fund and shall become a participating Employer upon acceptance by the Trustee of the Fund.
 - 13.3 Upon commencement of employment, the Employer shall provide each Employee with membership forms for the funds listed in Clauses (a) and (b) above and shall forward the completed membership forms for the Employee's choice of fund within 28 days. In the event that the Employee has not completed an application form within 28 days, the Employer shall forward contributions and Employee details to HESTA (**Default Fund**). The Default Fund offers a MySuper product.
 - 13.4 Each Employee shall be eligible to receive contributions from the date of eligibility, notwithstanding the date the membership application prescribed in Clause 13.3 was forwarded to the Fund.
 - 13.5 The Employer will contribute to the Fund, on behalf of each Employee, the percentage of ordinary time earnings required by legislation, calculated to the nearest ten cents (any fraction below five cents shall be disregarded). Contributions will be made monthly on behalf of each Employee regardless of the Employee's age in any month.
 - 13.6 Upon request from an Employee, the Employer must provide a copy of the remittance receipt from the Fund showing the contributions made on the Employee's behalf or make it available for inspection, save that the Employee

shall be entitled to take a copy. The Employer shall contribute all superannuation contributions in accordance with the Trust Deed, save that late payment for reasons beyond the control of the Employer and non-allocation by the Fund shall not constitute a breach of this Agreement.

- 13.7 Any dispute regarding superannuation contributions, including but not limited to the frequency of contribution, shall be addressed under the Dispute Resolution Procedure of this Agreement at clause [X].

Voluntary Contributions

- 13.8 Where an Employee wishes to make voluntary contributions to the Fund, the Employee may authorise the Employer to deduct from the Employee's wages an amount or percentage specified by the Employee. Voluntary contributions deducted under this provision will be forwarded to the Fund by the Employer at the same time as the Employer's contributions. Where the Employer receives written authorisation from an Employee, it must commence making payments into the Fund on behalf of the Employee within fourteen days of receiving the authorisation.
- 13.9 An Employee may vary his or her additional contributions by a written authorisation and the Employer must alter the additional contributions within fourteen days of receiving the authorisation. An Employee may only vary his or her additional contributions once each month.

14 ALLOWANCES

(A) Higher Duties and In Charge Allowance

- (1) Subject to the approval of the Employer a Nurse who, for a period of five or more consecutive working days, performs the duties of a position higher than those of the Employee's normal position shall be paid the ordinary rate of pay prescribed for the higher position for all time so worked.
- (2) Subject to the approval of the Employer a Registered Nurse Level 1 or Level 2 who, for more than half a shift, is required to assume charge of a care unit where a Level 3 nurse is normally employed, shall be paid in accordance with the rate set out at Schedule 2 for each shift worked.

PROVIDED THAT the in charge responsibility includes all areas of the facility including catering, domestic and care staff.

PROVIDED FURTHER THAT there is no entitlement to this payment if a Registered Nurse Level 3 or above is rostered for duty at the same time and in the same unit.

- (3) Subject to the approval of the Employer an aged care Employee, other than an administrative Employee, engaged continuously for two hours or more on duties carrying a higher rate than their ordinary classification will be paid the higher rate for the day. If the work is for less than two hours, they will be paid the higher rate for the time worked.

This will apply whether or not an Employee works in accordance with a roster.

- (4) Subject to the approval of the Employer an aged care Employee engaged as an administrative Employee who, for a period of five consecutive working days or more,

performs the duties of an Employee with a higher classification, then that Employee will be paid the rate applicable to the higher paid classification.

(B) Post Graduate Qualification Allowance

- (1) A registered nurse who holds post graduate qualifications shall be paid an allowance, in addition to salary, as follows –
- (a) for a post graduate hospital or post graduate certificate – 4.0% of the ordinary rate of pay;
 - (b) for a post graduate diploma or a degree other than a nursing under graduate degree – 6.5% of the ordinary rate of pay;
 - (c) a masters or a doctorate – 7.5% of the ordinary rate of pay;

PROVIDED THAT, an Employee, is entitled to payment of only one qualification allowance.

PROVIDED FURTHER THAT, payment of an allowance under this sub clause, is dependent upon the qualification being relevant to the Employee's current area of practice, that the qualification is required by the Employer and that the qualification is used in the performance of the Employee's work.

- (2) A post graduate qualification allowance paid in accordance with this sub clause shall be taken into account in calculating overtime and annual leave payments.

(C) Certificate Allowance – Advanced Diploma of Nursing

- (1) An enrolled nurse who holds an Advanced Diploma of Nursing (**Qualification**) shall be paid an allowance of 2% of their ordinary rate of pay, PROVIDED THAT relevant aged care module(s) have been undertaken by the Employee as part of the Qualification.

(D) Foul and Nauseous Linen (Aged Care Employees only)

- (1) An allowance of \$0.46 per hour or part thereof will be paid to an Employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of an unusually dirty or offensive nature having regard to the duty normally performed by such Employee in such classification. Any Employee who is entitled to be paid an allowance will be paid a minimum sum of \$2.46 for work performed in any week.

(E) Influenza Vaccination (Aged Care Employees only)

- (1) The Employer will pay the costs of annual influenza vaccinations for all Employees.

(F) Allowances Not To Be Taken Into Account

- (1) Allowances specified in this Agreement, other than higher duties allowance and certificate and/or diploma allowance, shall not be taken into account in calculating overtime and shift loadings specified in this Agreement.
- (2) Sub clause (1) above notwithstanding, the 25% loading payable to casual Employees is to be taken into account before calculating rates payable for weekend and public holiday shifts, but shall not be taken into account when calculating overtime payments.

15 TRAVELLING AND EXCESS FARES

Travel

- (1) Employees required to travel in the course of their duties are to be reimbursed for all valid travelling expenses incurred and all reasonable out-of-pocket expenses.
- (2) Employees required to use their own motor vehicles in connection with the business of the Employer are to be reimbursed on a per kilometre travelled basis in accordance with the Australian Taxation Office rates prevailing at the time.

Excess Fares

- (3) Employees required to attend for work at a location other than their usual workplace are to be reimbursed any additional fares they may incur.
- (4) An Employee required to work overtime at a time when public transport is not available is to be reimbursed reasonable costs of travel from work to home.

PROVIDED THAT that sub clause (4) does not apply to Employees who drive their own vehicles to and from work.

16 UNIFORMS

Uniforms to Be Provided

- (1) Sufficient, suitable and serviceable uniforms are to be provided, free of cost, to all Employees who are required by the Employer to wear uniforms.
- (2) If uniforms are not provided as per sub clause (1), Employees are to be paid in lieu of the uniform as per Schedule 2.

PART C – TYPES OF EMPLOYMENT, TERMINATION OF EMPLOYMENT, STAFFING AND WORKLOAD

17 CONTRACT OF EMPLOYMENT

17.1 Employment Categories

- (a) Employees under this Agreement will be employed in one of the following categories:
 - (i) full-time; or
 - (ii) part-time; or
 - (iii) casual.
- (b) At the time of engagement the Employer will inform each Employee whether they are employed on a full-time, part-time, or casual basis.
- (c) The Employer may direct an Employee to carry out such duties that are within the limits of the Employee's skill, competence and training, consistent with the respective classification.

-
- (2) Employees, other than casual Employees, are entitled to be paid in respect of any week at their ordinary rate of pay as specified in this Agreement, and in addition shift and weekend penalties where applicable, if –
- (a) due to the act, default or order of their Employer they do not work for their full number of ordinary hours; and
 - (b) they are ready, willing and available to work their full number of ordinary hours in that week.
- (3) An Employee's position, at the time of appointment, will be classified according to the classification definitions in this Agreement.
- (4) The Employer may direct an Employee to carry out such duties as are within the limits of an Employee's skill, competence and training consistent with the classification structure in this Agreement.

This clause does not allow the Employer to pay an Aged Care Employee at a rate lower than their classification for performing work of a lower classification nor does it prevent the Employee receiving any entitlement for performing work at a higher classification.

17.2 Minimum Engagement

The minimum engagement for a shift on any one day shall be:

- four hours for full-time Employees;
- two hours for all part-time and casual Employees.

17.3 Full-time Employment

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

18 CASUAL EMPLOYEES

- (1) A casual Employee is an Employee engaged on an hourly basis in relieving work or work of a casual nature and whose engagement is terminable by the Employer in accordance with the Employer's requirements.
- (2) Notwithstanding (1) above if required to attend for work a casual Employee must be provided with a minimum of two hours work for each engagement or paid for a minimum of two hours for each engagement.
- (3) The rate of pay for ordinary hours of work is the relevant hourly rate, plus a loading of 25% in lieu of annual leave, personal leave and public holidays.
- (4) Where a casual Employee is required by the Employer to work in excess of 10 hours in a day or 76 hours in a fortnight the casual Employee will be paid for such excess hours at the rate of time and a half the ordinary rate of pay for the first two hours and double time the ordinary rate of pay thereafter. Where such overtime is

worked on a Saturday or Sunday the payment shall be at the rate of double time the ordinary rate of pay.

19 PART-TIME EMPLOYEES

(1) Engagement of part time Employees

- (i) A part-time Employee is an Employee who is engaged to work less than full-time hours of an average of 38 ordinary hours per week (over a four week period) and has reasonably predictable hours of work.
- (ii) A part-time Employee will be rostered for a minimum of two hours on any shift.
- (iii) Unless otherwise stated, the terms of this agreement will apply on a pro rata basis to part-time Employees on the basis that the ordinary weekly hours for full-time Employees are 38.

(2) Part-time Employees are entitled to paid annual leave, personal leave and public holidays at the ordinary rate of pay.

(3) The rate of pay for ordinary hours of work for part-time Employees is the ordinary hourly rate of pay.

(4) For work performed on Saturdays, Sundays and public holidays part-time Employees are to be paid at the rates specified in Clause 29 or 30 as applicable.

(5) Aged Care Employees

(a) Before commencing employment, the Employer and Employee will agree in writing on:

- (i) the span of hours that the Employee may be rostered within a fortnight. This span of hours shall include which shifts the Employee may be rostered to work; and
- (ii) the days of the week the Employee may be rostered to work within a fortnight; and
- (iii) the agreed minimum number of contracted hours to be worked per fortnight.

(b) Notwithstanding the overtime provisions prescribed at the Overtime Clause of the Agreement, a part time Employee may agree to work in excess of their rostered ordinary hours at the ordinary time rate of pay, provided that all time worked by a part-time Employee which exceeds 8 hours on a day or afternoon shift (unless the Employee and Employer have mutually agreed to an arrangement where the Employee works a 10 hour shift), or 10 hours on night shift, or 76 hours per fortnight, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the relevant public holiday penalty rates.

(d) No part-time Employee shall be directed to work in excess of their rostered ordinary hours at the ordinary rate of pay.

(e) Where an Employee works, by agreement, in excess of their rostered ordinary hours in accordance with this clause, such Employee shall record those additional hours on their timesheet for the corresponding period.

(6) 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 their Manager. The Manager will formally respond to the request by the Employee stating the reasons if the request is not agreed to. The Employer may refuse any request for a review if the period that the Employee has been working more than their specified contracted hours is less than 6 months. The Manager will also take into account that the hours worked in the following circumstances will not be incorporated to any adjustment made:

- (a) 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
- (b) if the increase in hours is due to a temporary increase in hours only due, for example, to the specific needs of a resident or client.
- (c) 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 workplace.

20 TERMINATION OF EMPLOYMENT

- (1) Except for misconduct justifying summary dismissal, an employee whose employment is terminated at initiative of the Employer shall be given notice of termination of employment, or payment in lieu of notice, by the Employer is as follows:-

The notice prescribed under the Fair Work Act is as follows:

Notice of Termination by the Employer

- (a) In order to terminate the employment of the Employee, where employed on a full-time or part-time basis, the Employer shall give to the Employee the period of notice specified in the table below:

Period of Continuous Services	Period of Notice
1 year or less	1 week
Over 1 year and up to the completion of 3 years	2 weeks
Over 3 years and up to the completion of 5 years	3 weeks
Over 5 years of completed service	4 weeks

- (b) In addition to this notice, where the Employee is over 45 years of age at the time of the giving of the notice with not less than two years continuous service, they will be entitled to an additional week's notice.
- (c) Payment in lieu of the notice will be made if the appropriate notice period is not required to be worked. Employment may be terminated by the Employee

working part of the required period of notice and by the Employer making payment for the remainder of the period of notice.

- (d) In calculating any payment in lieu of notice, the wages the Employee would have received in respect of the ordinary time they would have worked during the period of notice had their employment not been terminated will be used.
- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct, or in the case of casual Employees or Employees engaged for a specific period of time or for a specific task or tasks.
- (f) In the event that a trainee is terminated at the end of the traineeship and is re-engaged by the Employer within six months of such termination the period of traineeship shall be counted as service in determining any future termination.
- (g) Notice of Termination by the Employee

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 1 weeks' pay at the rates prescribed for his or her classification. The forfeiture of monies shall be subject to the Employee's agreement in accordance with the requirements of s. 324 (1)(b) of the Fair Work Act 2009.

- (h) Upon the termination of the services of any 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.
- (i) Summary dismissal

The Employer shall have the right to dismiss the Employee without notice for serious misconduct as defined by the Fair Work Regulations 2009 and in such cases the wages shall be paid up to the time of dismissal only.

21 REDUNDANCY

Redundancy Entitlements is a matter provided for in the NES (Division 11 – Notice of Termination and Redundancy Pay). Where there is an inconsistency between this Clause and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

Requirement to Consult.

- (1) For the purpose of this clause **redundancy** includes a situation where the Employer believes for operational reasons that it is necessary to make one or more positions redundant, or to reduce the number of Employees, or to decrease an Employee's ordinary hours of work thus causing a reduction to the Employee's income.
- (2) Where the Employer believes that it may be necessary to implement a redundancy, the Employer is to immediately notify the Employee(s) and commence a process of consultation.

Redeployment and Retraining

(3) If a redundancy is likely to occur –

- (a) the Employer will actively explore all internal redeployment opportunities for Employees surplus to requirements;
- (b) Employees seeking redeployment may be retrained for other, available positions on condition that the Employees concerned can demonstrate that they possess the necessary capacity for those positions;
- (c) if the Employer deems it necessary for an Employee to undergo re-training in order for the Employee to perform the duties of the position to which the Employee is being redeployed, the Employer is to provide such training, at no cost to the Employee who is entitled to undertake the training during working hours;
- (d) all reasonable attempts will be made to ensure that an Employee's area of choice, hours of work, previous employment classification and roster patterns are met in any redeployment exercise.

Notice of Redundancy

- (4) The Employer is to provide as much notice as is reasonably practicable of an intended redundancy.
- (5) The minimum period of notice to be given to an Employee affected by a redundancy is –

Employee's period of continuous service	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 minimum period of notice is to be increased by one week if an Employee is over forty-five years of age at the time of termination of employment and has completed two or more years of continuous service with the Employer.

Voluntary Redundancy

- (6) Before a redundancy is effected, the Employer is in the first instance to seek expressions of interest in a voluntary redundancy package from all Employees.

PROVIDED THAT the Employer is only required to seek such expressions of interest from Employees employed at the same classification level and at the same worksite in which the redundancy is being effected.
- (7) In assessing expressions of interest for voluntary redundancy the Employer will take into account the skill and operational requirements of the facility.
- (8) Wherever reasonably practicable involuntary redundancies will only be effected if there are no, or insufficient, volunteers for a voluntary redundancy package after expressions of interest have been sought and assessed from existing Employees in accordance with sub clauses (6) and (7).
- (9) The Employer is to consult with the Employee(s) and their representative(s) if intending to proceed with an involuntary redundancy after declining an expression of interest for voluntary redundancy.

Redundancy Package

- (10) Where retraining and redeployment opportunities are not available, the redundancy package to be paid to redundant Employees is –

Voluntary Redundancies

- (a) notice as specified in this clause, or payment in lieu of that notice; and
- (b) two weeks pay for each completed year of service and pro rata for an uncompleted year, provided that if this pay is less than the NES the NES amount will prevail; and
- (c) payment for all accrued annual leave including leave loading.

Involuntary Redundancies

- (a) notice as specified in this clause, or payment in lieu of that notice; and
- (b) two weeks pay for each completed year of service and pro rata for an uncompleted year, provided that if this pay is less than the NES the NES amount will prevail; and
- (c) payment for all accrued annual leave including leave loading; and
- (d) payment of pro rata long service leave for Employees with more than five years continuous service.

PROVIDED THAT where the Employer facilitates acceptable alternative employment for a redundant Employee, including the transfer of all entitlements, the provisions of this clause shall not apply.

- (e) Acceptable alternative employment will be deemed to be where the Employee has gained employment in a position which reflects the skills of that Employee and which provides the same financial and employment benefits, including security of employment, as the position from which the Employee was made redundant

Partial Redundancy Package For Changed Or Decreased Hours

- (11) Where an Employee is not offered similar hours or hours are altered, other than by a normal change of roster in accordance with this Agreement, and this causes a loss of income to the Employee, the Employer is to pay a partial redundancy package calculated as –

partial redundancy payment = existing weekly rate, minus new weekly rate, multiplied by 2, multiplied by years of service, plus pro rata for any uncompleted year of continuous service.

Definition

- (12) For the purposes of this clause a **week's pay** means the ordinary rate of pay, plus any loadings and all-purpose allowances to which the Employee is normally entitled.

Paid Time Off To Seek Alternative Employment

-
- (13) Employees who are made involuntarily redundant are to be given assistance by the Employer in seeking suitable alternative employment, including being granted paid time off to look for work and to arrange training or re-training.

Financial Counselling

- (14) The Employer will pay for up to two sessions of financial counselling, from a financial adviser agreed to by the Employer and the Employee, for Employees who are offered a redundancy, or who express an interest in redundancy.

Details Of Redundancy Package To Be Provided

- (15) The Employer will provide a fully detailed statement of the redundancy package at the time the offer of redundancy is made to an Employee.

Notifying Redundant Employees Of New Vacancies

- (16) In the event that a position becomes available in the Employer's establishment, the Employer is to take reasonable steps to notify Employees made redundant by the Employer of the vacancy and to invite them to apply for it, within twelve months of the Employees being made redundant.

22 WORKLOAD

- (1) Workloads and management of workloads is an important issue. In order to identify, minimise and deal with instances of excessive workloads:
- (a) The Employer will ensure that supervisors and managers are aware that the tasks allocated to Employees including the general workload for the Employee must not exceed what can reasonably be performed in the hours for which they are employed.
 - (b) The Employer will ensure that supervisors and managers implement procedures to monitor the hours worked and the required workload of the Employees they supervise. Where Employees regularly work hours in excess of the hours for which they are employed to perform their jobs or have workloads that are unreasonable, changes (technology, responsibility, and extra resources) will be implemented in consultation with the Employees or their nominated representative.
 - (c) In most circumstances vacant positions will be filled within three months. If it appears likely that will not be the case, supervisors and/or managers will consult affected Employees, giving the reasons why the position will not be filled and advising how the workloads will be managed having regard to (a) and (b) above.
 - (d) In most circumstances temporary vacancies will be filled as they arise. Where a position is not to be filled supervisors and managers will consult affected Employees, giving the reasons why the position will not be filled and advising how the workload will be managed having regard to (a) and (b) above.

PART D – HOURS OF WORK, ROSTERS AND RELATED MATTERS

23 HOURS OF WORK (Aged Care Employees)

- (1) The ordinary hours of work for Employees (other than Rostered Employees) are between the hours of 6.00am and 6.00pm, Monday to Friday and:

- (i) The shift length or ordinary hours of work per day will be a maximum of:
 (A) 8 hours, or 10 hours if agreed between the Employer and Employee for a shift or for an agreed roster period;
 (B) 10 hours (night shift);

exclusive of meal breaks.

Work performed by a 'day worker' prior to 6.00am and after 6.00pm will be paid at the relevant overtime rates.

- (2) Employees may be required to work to a roster, subject to the Roster Clause (Aged Care Employees only) in this Agreement. Where an Employee is required to work ordinary hours outside the span of hours of 6.00am to 6.00pm, Monday to Friday that work must be in accordance with a roster.

- (3) Ordinary Hours – Rostered Employees

- (i) Where an Employee is required to work in accordance with a roster, the ordinary hours of work for that Employee must not exceed:

- (A) 8 hours on a day or afternoon shift, or 10 hours if agreed between the Employer and Employee for a shift or for an agreed roster period;
 (B) 10 hours (night shift); nor
 (C) 76 hours in any 14 days; nor
 (D) 152 hours in any 28 day accounting period.

- (ii) Daylight Savings

If an Employee works on a shift during which time changes because of the introduction of, or cessation to, daylight saving, that Employee shall be paid for the actual hours worked at the ordinary time rate of pay (including any shift penalties or allowances ordinarily payable in respect of this shift).

No overtime is payable for the additional hour worked because of daylight saving.

- (4) Time Off in Lieu of Payment

The Employer and the majority of Employees may agree to establish a system of time off in lieu of overtime provided that:

- (i) An Employee may elect, with the consent of the Employer, to take time off in lieu of payment for overtime at a time or times agreed with the Employer.
 (ii) Overtime taken as time off during ordinary time hours will be taken at the appropriate penalty rate equivalent.
 (iii) An Employer will, if requested by an Employee, provide payment at the relevant overtime rate in the Overtime Clause in this Agreement, for any overtime worked under this subclause where the time in lieu is not taken within four weeks of the accrual.

- (iv) An Employee or the Employees may choose to request their union to represent their interests in negotiations referred to in paragraph (i) above.
- (v) The Employer must keep accurate records of time off in lieu arrangements in the wages records.

(5) Make-up Time

The Employer and the majority of Employees may agree to establish a system of make-up time provided that:

- (i) An Employee may elect, with the consent of the Employer, to work 'make-up time' under which the Employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours.
- (ii) A rostered Employee may elect, with the consent of their Employer, to work 'make up time' under which the Employee takes time off during ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.

An Employee or the Employees may choose to request their union to represent their interests in negotiations referred to in paragraph (i) above.

- (iii) The Employer must keep a record of makeup time arrangements in the wages records.

24 HOURS OF WORK – DAY WORKERS (Nurses)

- (1) The ordinary fortnightly hours of work for full time Employees are 76.
- (2) The ordinary hours of work specified in (1) above are to be worked over five days, Monday to Friday, the shift length or ordinary hours per day will be a maximum of 8 hours, or 10 hours if agreed between the Employer and Employee for a shift or for an agreed roster period; exclusive of meal breaks, between 6.00am and 6.00pm.
- (3) Work performed by a 'day worker' before 6.00am and after 6.00pm, other than by agreement as provided for in (4), is to be paid at overtime rates.

Make Up Time

- (4) An Employee may elect, with the agreement of the Employer, to work make-up time under which the Employee takes off ordinary hours and works those hours at a later time during the spread of ordinary hours.

PROVIDED THAT for the purpose of this Clause, where an Employee's ordinary hours of work within the spread of hours 6.00am to 6.00pm have been fewer than 76 in any fortnight, hours worked outside that spread shall be deemed to be part of the Employee's ordinary hours of work.

25 HOURS OF WORK – SHIFT WORKERS (Nurses)

- (1) The ordinary hours of shift workers are not to exceed –
 - (a) 8 hours on a day or afternoon shift, or 10 hours if agreed between the Employer and Employee for a shift or for an agreed roster period; 10 hours on a night shift; exclusive of meal breaks;
 - (b) 76 hours in a fortnight; or

- (c) 152 hours in 28 consecutive days.
- (2) Subject to this Clause shift workers shall by mutual agreement work at such times as required by the Employer.
- (3) Unless agreed otherwise an Employee shall not be required to start a shift unless there has been a break of at least nine hours since the Employee's previous shift finished.

Part-Time Shift Workers

- (4) The number of rostered hours worked by a part-time shift worker shall not exceed 76 in any one fortnight.
- (5) Where a part-time Employee works in excess of those hours stipulated in (4) above, those excess hours are to be paid at the applicable overtime rate of pay.

Daylight Saving

- (6) At the changeover of time consequent upon daylight saving in each year –
 - (a) Employees shall be paid for actual time worked irrespective of the length of the shift; and
 - (b) Employees paid in accordance with (a) are not entitled to payment for the one hour lost.

Make Up Time

- (7) An Employee may elect, with the agreement of the Employer, to work make-up time under which the Employee takes off ordinary hours and works those hours at a later time during the spread of ordinary hours.

26 MEAL BREAKS

26.1 Nurses

Meal Times – Day Workers

- (1) The minimum time allowed for meals shall be half an hour and shall be arranged in accordance with subclause (3).

Work During Meal Break

- (2) Subject to existing custom and practice day workers who are directed to work during their usual meal break shall, for all work performed during such period and until a meal break is allowed, be paid at the rate of time and one half of their ordinary rate of pay.
- (3) By arrangement with the relevant Employees an unpaid meal break of not less than half an hour and not more than one hour shall be allowed on each day for Employees who have worked in excess of five hours.
- (4) Where Employees are interrupted during their meal break by a call to duty, such meal break shall be counted as time worked and the Employees shall be allowed a meal break as soon as practicable during the remainder of their ordinary working hours.

- (5) Unless agreed otherwise between the Employer and Employee(s), Employees who are not relieved shall be paid at the rate of time and a half of the relevant hourly rate for the period of the meal break and until relieved.

Meal Break When Required To Work Overtime

- (6) 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 the ordinary rate of pay.

PROVIDED THAT an 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.

Overtime Meal Allowance

- (7) An Employee will be supplied with an adequate meal where the Employer has adequate cooking and dining facilities or be paid a meal allowance as per Schedule 2 in addition to any overtime payment as follows:
- (i) when required to work overtime 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 allowance as per Schedule 2 will be paid,
 - (iii) Clause (7) will not apply when an Employee could reasonably return home for a meal within the meal break.

26.2 Aged Care Employees

- (1) Employees, who work in excess of five hours on any day will, subject to subclause (2) below, will receive an unpaid meal break of not more than one hour and not less than 30 minutes. The duration of the meal break may be altered by agreement between the Employer and the employee.
- (2) An employee receiving an unpaid meal break and who is directed to work during their meal break will be paid at the rate of time and a half of the relevant wage rate for all work performed during the meal break and after until a meal break is allowed.

26.3 Nurses and Aged Care Employees

- (1) Tea breaks
- (i) Two separate 10 minute intervals (in addition to meal breaks) will be allowed to each Employee on duty during each ordinary shift of 7.6 hours or more.
 - (ii) Where less than 7.6 ordinary hours are worked, Employees will be allowed one 10 minute interval in each four hour period.
 - (iii) Subject to mutual agreement, such intervals may alternatively be taken as one 20 minute interval.
 - (iv) Tea breaks will count as time worked.

27 OVERTIME (Nurses)

Requirement To Work Reasonable Overtime

- (1) Subject to (2) below an Employer may require an Employee to work reasonable overtime at the overtime rates specified in this Agreement.
- (2) An Employee may decline to work overtime if it would result in the Employee working hours which are unreasonable having regard to:
 - (a) any risk to the Employee's health and safety;
 - (b) the Employee's personal circumstances including family responsibilities;
 - (c) the needs of the Employer.
 - (d) the notice (if any) given by the Employer of the requirement to work overtime and by the Employee of his or her intention to refuse it; and
 - (e) any other relevant matter.
- (3) Overtime is not to be worked without the prior approval of the Employer.

Payment For Working Overtime –

- (4) For all time worked in excess of ordinary hours of work, payment, is to be made as follows:
 - (a) Monday to Friday inclusive – time and a half for the first two hours and double time thereafter;
 - (b) Saturdays and Sunday – double time.
 - (c) For Day workers only: Public holidays – double time and one half. Provided that a shift worker shall be paid at the rate of double time in accordance with Clause 29(4)(b) of this Agreement.

PROVIDED THAT a day worker who is regularly required to work on public holidays may by agreement with the Employer, in addition to any paid time off in lieu granted by the Employer, be paid at the rate of time and one half of the ordinary rate of pay for the first eight hours, or 10 hours if agreed between the Employer and Employee for the shift, worked during the Employee's spread of hours, and thereafter at the overtime rates specified above.

PROVIDED FURTHER that payment for overtime, must not in the aggregate exceed the equivalent of double time and a half of an Employee's ordinary rate of pay.

Director of Nursing/Care

- (5) The Director of Nursing/Care is not entitled to payment for overtime.

PROVIDED THAT a Director of Nursing/Care who work overtime on rostered nursing duties in excess of their ordinary duties as Director of Nursing/Care shall be entitled to receive payment for overtime calculated by reference to the ordinary rate of pay for the duties being performed for all time so worked.

Calculation Of Overtime To Be Based On Agreement Rates

- (6) For Employees receiving a 25% loading in lieu of personal leave, annual leave and public holidays, payment for overtime is to be calculated by reference to the relevant hourly rate.

Time Off In Lieu Of Payment For Overtime

- (7) By agreement between the Employer and an Employee, time off in lieu of overtime may be taken at the equivalent overtime rate.

PROVIDED THAT that such an agreement, may be discontinued at the request of either the Employer or the Employee.

- (8) Where time off in lieu of overtime has not been taken within four weeks of its accrual the Employer shall, if so requested by an Employee, pay the Employee the overtime rates that would have applied if the Employee had not elected to take time off in lieu of that overtime.

Rest Period After Overtime

- (9) Where Employees are required to work overtime it shall, wherever reasonably practicable, be so arranged that Employees have at least eight consecutive hours off duty between the work of successive days.
- (10) Employees, other than casual Employees, who work so much overtime between the termination of their ordinary hours on one day and the commencement of their ordinary hours on the next that they have not had at least eight consecutive hours off duty between those finishing and starting times, shall not be required after the completion of the overtime to resume the next day's ordinary hours until they have had eight consecutive hours off duty, without loss of pay for any ordinary hours working time occurring during such time off duty.
- (11) If at the direction of the Employer an Employee resumes or continues work without having had eight consecutive hours off duty as specified in (10) above, the Employee shall be paid at double time until released from duty and shall then be entitled to eight consecutive hours off duty without loss of pay for any ordinary hours working time occurring during such time off duty.

27A OVERTIME (Aged Care Employees)

- (1) The Employer may require any Employee to work reasonable overtime. No overtime may be worked without prior approval of the Employer.

For the purposes of this clause overtime means:

- (i) Work in excess of ordinary hours of work as set out in Hours of Work clause and the Roster clause, as applicable, in this Agreement.
 - (ii) For a day worker, work outside the span or ordinary hours 6.00am to 6.00pm.
- (2) For a part-time Aged Care Employee who works in accordance with a roster, additional hours shall be paid in accordance with Clause 19(5) of this Agreement.
- (3) For all time worked in accordance with subclause (1) above the following overtime rates will be paid:

- (i) Monday to Friday inclusive - time and one half for the first two hours and double time after that;
 - (ii) Saturday and Sunday - double time;
 - (iii) Holidays with Pay - double time and one half.
 - (iv) Each days overtime will stand alone.
- (4) Unless the period of overtime is one and a half hours or less, an Employee before starting overtime will be allowed a paid meal break of 20 minutes paid at ordinary rates. An Employer and an Employee may agree to any variation of this provision to meet the circumstances of the work. No Employee will be required to work more than five hours without a meal break.
- (6) The allowances provided for in this Agreement must not be taken into consideration in the calculation of overtime payments.
- (7) The calculation of the overtime payments provided for in this clause for an Employee in receipt of a loading in lieu of sick leave, annual leave and holidays with pay will be based upon the relevant wage rate contained in this Agreement.
- (8) Where there is agreement between the Employer and the Employee, time off in lieu of overtime may be taken at the penalty rate equivalent. Where an agreement is made to take time off in lieu of overtime, the agreement may be concluded by agreement or at the request of either the Employer or the Employee.

Before entering into an Agreement under this subclause, the Employee has the right to consult their union.

- (9) Eight Hour Break between Shifts
- (i) An Employee (other than a casual Employee) who works so much between the end of their ordinary work on one day and the commencement of their ordinary work on the next day that the Employee has not had at least eight consecutive hours off duty between those times, will, subject to this clause, be released after completion of such time worked until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during hours off duty.
 - (ii) If on the instructions of the Employer the Employee resumes or continues work without having had eight consecutive hours off duty they will be paid at double time rates until released from duty for such period, and will then be entitled to be absent until they have eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
 - (iii) When overtime work is necessary it will, wherever reasonably practicable, be arranged so that Employees have at least eight consecutive hours off duty between the work of successive days.

28 ON-CALL ARRANGEMENTS

Call Back

- (1) An Employee recalled to work overtime after finishing the normal day's work, whether notified before or after leaving the workplace, is to be paid at the applicable overtime rate of pay, as follows:

- (a) For the first recall a minimum payment of four hours; and
 - (i) Where an Employee is recalled to work a second time, and the recall is within the hours for which payment is already due under subclause (a) above, the time worked in the first and second recall will be combined for the purposes of calculating the payment due under subclause (a). Time travelling to the recall to duty shall be included for the purposes of calculating the total period for payment due under subclause (a).
- (b) For any subsequent recall, subject to (a)(i), a minimum payment of three hours.
- (2) Time reasonably spent in getting to and from work is to be regarded as time worked.
- (3) Nurses recalled to work within two hours of their normal starting time shall be paid at overtime rates with a minimum payment of two hours.

An Aged Care Employee who is recalled to work within two hours of their normal starting time will be paid at the overtime rate in accordance with the Overtime Clause in this Agreement. However, where the payment does not equal or exceed four hours pay, then the Employee will be paid four hours pay.

Close Call

- (4) For the purposes of this Clause **close call** means an Employee being required to be on call for duty and not allowed to leave the workplace.
- (5) An Employee may be required by the Employer to remain on close call.
- (6) An Employee required to remain on close call shall –
 - (a) if not required to commence work be paid a minimum payment equivalent to six hours at the Employee's ordinary rate of pay; or
 - (b) if required to commence work be paid at the relevant overtime rate, provided that such payment shall not be less than the minimum payment specified in (1) above.

Remote Call

- (7) For the purpose of this Clause **remote call** means an Employee rostered to be available for call but allowed to leave the workplace.
- (8) An Employee rostered to remain on remote call
 - (a) is to be paid amounts specified in schedule 2 when the Employee is required to be so available.
- (9) If an Employee rostered to be on remote call is recalled to work payment is to be as specified in (1) above, in addition to the allowance specified in (8) above.
- (10) Where practicable an Aged Care Employee will be on remote call for a minimum period of seven consecutive days; otherwise a rotating system averaging at least seven days per Employee per cycle will be worked.

29 SHIFT WORKERS (Nurses)

Afternoon and Night Shift Allowances

(1) The provisions of this clause do not apply where an Employee commences their ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day. Shift workers are to be paid the following loading on their relevant hourly rate for working afternoon or night shifts –

(a) afternoon shift means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day; – 15 42.5%;

(b) night shift means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day. – 20.0%.

(2) A shift worker who –

(a) during a period of engagement on shift, works night shift only; or

(b) works on night shift for a period in excess of four consecutive weeks; or

(c) works on a night shift which does not rotate or alternate with another shift or with day work so as to give the Employee at least one third of working time off night shift in each shift cycle;

shall for such engagement, period or cycle be paid 30% more than the Employee's ordinary rate of pay for all time worked during ordinary working hours.

The shift penalties prescribed in this clause will not apply to shiftwork performed by an Employee on Saturday, Sunday or public holiday where the extra payment prescribed by clause—Saturday and Sunday work and clause—Public holidays applies

Saturday Shifts

(3) A shift worker who works on a rostered shift, the major portion of which falls on a Saturday, shall be paid at the rate of time and one half of the Employee's relevant hourly rate, which shall be in substitution for the shift allowance specified in (1) above.

PROVIDED THAT this sub clause shall not prejudice any right of an Employee to obtain a higher rate in respect of that work by virtue of any other provision contained in this Agreement.

Sunday and Holiday Shifts

(4) Shift workers who work on a rostered shift, the major portion of which falls on a Sunday or a public holiday, shall be paid the following loadings –

(a) Sundays – at the rate of time and three quarters of the relevant hourly rate;

(b) Public holidays – at the rate of double time of the relevant hourly rate.

PROVIDED THAT these loadings shall be in substitution for, and not cumulative upon, the shift allowance set out in sub clause (1) above.

(5) The time worked by an Employee on a shift commencing before midnight on a day preceding a Sunday or holiday and extending into such Sunday or holiday the time worked before midnight shall be regarded as time worked on such Sunday or holiday.

- (6) Where a shift falls partly on a holiday, the shift the major portion of which falls on a holiday, shall be regarded as the holiday shift.
- (7) Where a shift worker is required to work on a public holiday and is granted a substitute day the loading specified in sub clause (4) above shall not apply.

Part-Time Shift Workers – Work Outside Rostered Shifts

- (9) The provisions of this clause apply to part-time shift workers.

PROVIDED THAT if an Employee by choice or agreement with the Employer works outside rostered shifts such work shall not attract overtime rates.

PROVIDED FURTHER THAT any time worked in excess of 8 hours on a day or afternoon shift, or 10 hours if agreed between the Employer and Employee for a shift or for an agreed roster period or 10 hours as rostered on night duty, per day shall be paid at overtime penalty rates set out at Clause 27- Overtime (Nurses).

Rosters

- (10) There is to be a shift roster which must –

Rotation

- (a) make provision for rotation unless all of the Employees concerned desire otherwise; and

Number Of Shifts

- (b) not roster any Employee to work for more than eight shifts in any nine consecutive days; and

Roster Period

- (c) stipulate a 14 day roster period. Two 14 day roster periods shall operate in each 28 day cycle with eight rostered days off in each 28 day cycle;

Minimum Number of Days Off

- (d) make provision for a minimum of two consecutive days off each week except where alternative arrangements are made by agreement between the Employer and the Employee(s) concerned; and

Change to Roster

- (e) not be changed without a minimum of two weeks' notice, provided that:
 - (i) by agreement between the Employer and the Employee(s) concerned changes to rosters may occur without the two weeks' notice specified in (e) above;
 - (ii) a roster may be altered at any time so as to enable the service of the Employer to be carried on where another Employee is absent from duty on account of illness or emergency;
 - (iii) an individual Employee's place on a roster, shall not be changed except with a week's notice of such a change, or payment of the relevant

overtime rate, if such change is not in accordance with (i) or (ii) of this subclause.

Meal Break

- (11) A roster must show the time span of Employees' unpaid meal breaks for Employees who have worked for more than four hours.
- (12) The unpaid meal break is to be taken between the beginning of the fourth hour and the end of the sixth hour of the shift.

PROVIDED THAT a day shift worker's meal break is to be taken between 12.00midday to 2.00 p.m.

- (13) Meal breaks are unpaid except –
 - (a) if an Employee who works a night shift, weekend shifts or Public Holiday, is required to remain at the workplace and may be called upon to return to work during a meal break, in which circumstances the meal break is to be paid.

PROVIDED THAT where the meal break is paid the overtime provisions relating to work performed during meal breaks do not apply.

PROVIDED FURTHER THAT unless agreed otherwise between the Employer and Employee[s]), shift workers who are not relieved shall be paid overtime of the relevant hourly rate for the period of the meal break and until relieved.

- (14) If an Employee on a paid meal break is interrupted during the meal break by a call to duty, the Employee shall be allowed a meal break as soon as practicable during the remainder of the ordinary working hours.

PROVIDED THAT the circumstances in which an Employee is called to duty during a meal break shall be emergency situations or other circumstances where the work required cannot wait until after the meal break has been completed.

Handover

- (15) Where meal breaks are paid and there is therefore insufficient paid time each day to allow for a handover, a maximum of 15 minutes per shift is to be paid for handover.

PROVIDED THAT if handovers are completed in less than 15 minutes only the time actually worked shall be paid.

PROVIDED FURTHER THAT if handovers exceed 15 minutes, no additional payment shall be made.

- (16) Handover time is to be paid at the rate applying to the shift worked by the Employee except that overtime rates shall not apply.

Overtime

Payment for Overtime

- (17) Payment for overtime shall be as set out at Clause 27 – Overtime (Nurses) of this Agreement.

30 ROSTER (Aged Care Employees)

- (1) Employees required working ordinary hours outside the span of hours of 6.00am to 6.00pm, Monday to Friday will work in accordance with a roster established in accordance with this clause.
- (2) Where a roster is established, the roster will be documented setting out clearly the names of the Employees required to work on that roster, the days, dates and hours during which each Employee is required to work.
- (3) Employees working afternoon or night shift will be paid the following percentages in addition to the ordinary rate for such shift. Provided that Employees who work less than 38 hours per week will only be entitled to the additional rates where their shift commence prior to 6.00 am or finish subsequent to 6.00 pm
 - (i) Afternoon shift commencing at 10.00 am and before 1.00 pm
 - (ii) – 10.0%;
 - (iii) Afternoon shift commencing at 1.00pm and before 4.00pm – 15.0%
 - (iv) Night shift commencing at 4.00pm and before 4.00am or commencing at 4.00am and before 6.00am – 20.0%. Excepting where such shift commences at 4.00pm and before 6.00pm and finishes before 9.00pm – 15%.
- (4) An Employee entitled to a shift allowance under Subclause (3), will be paid the shift allowance for the entire shift.
- (5) For the purposes of Subclause (3), —ordinary hourly rate means the appropriate weekly rate divided by 38.
- (6) A roster established in accordance with this clause, whether rotating or non-rotating, will:
 - (i) Not require an Employee to work more than 8 hours on a day or afternoon shift, or 10 hours if agreed between the Employer and Employee for a shift or for an agreed roster period; or 10 hours (night shift); exclusive of meal breaks;
 - (ii) Employees, other than a casual Employee, will be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28 day cycle, with a provision for a minimum of two consecutive days off each week except where alternative arrangements are made by agreement between the Employer and the Employee(s) concerned;
 - (iii) Change To Roster
 - (1) not be changed without a minimum of two weeks' notice, provided that:
 - (A) by agreement between the Employer and the Employee(s) concerned changes to rosters may occur without the two weeks' notice specified in (1) above;
 - (B) a roster may be altered at any time so as to enable the service of the Employer to be carried on where another Employee is absent from duty on account of illness or emergency;
 - (C) an individual Employee's place on a roster, shall not be changed except with a week's notice of such a change, or

payment of the relevant overtime rate, if such change is not in accordance with (A) or (B) of this subclause.

- (7) A rostered Employee will work a maximum of 10 ordinary hours in a day, exclusive of meal breaks, continuously and the hours will not be broken, unless the Employee is working a broken shift. Broken shifts may be worked by agreement between the Employer and the Employee(s) concerned.
 - (a) A "broken shift" for the purposes of this subclause means a single shift worked by an Employee that includes one break in excess of 60 minutes, where the time between the commencement and termination of the broken shift shall be a maximum of 12 hours.
 - (b) All work performed outside a spread of 12 hours will be paid at overtime rates.
 - (c) An Employee must receive a minimum break of 8 hours between broken shifts rostered on successive days.
 - (d) Payment for a broken shift shall be at ordinary pay with weekend penalty rates and shift penalties.
- (8) Part-time Employees and casual Employees engaged as a rostered Employee, for work outside the roster, documented in accordance with subclause (2) above, will be entitled to the provisions of this clause with the following exceptions:
 - (i) Where an Employee works by agreement with the Employer they will not attract a penalty (other than roster loading, Saturday, Sunday and Holiday with Pay penalty) except that any time worked in excess of eight hours or 10 hours if agreed between the Employer and Employee on a day or afternoon shift; or 10 hours on a night shift; per day will be paid at overtime rates.
- (9) Saturday and Sunday Work
 - (i) Employees, whose ordinary working hours include work on a Saturday and/or Sunday, will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and a half, and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of double time. These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in Subclause (3).
 - (ii) Casual Employees will be paid in accordance with Subclause (9)(i). The rates prescribed in Subclause (3) will be in substitution for and not cumulative upon Subclause (9)(i).

PART E – LEAVE AND PUBLIC HOLIDAY ENTITLEMENTS

31 ANNUAL LEAVE

Period of Leave

(1) Day Workers

An Employee is entitled to 4 weeks paid annual leave after twelve months continuous service, less the period of annual leave.

(2) Shift Workers

(a) Nurses

- (i) In addition to the 4 weeks annual leave set out at clause 31(1), a shiftworker (as defined) is entitled to an additional week of annual leave on the same terms and conditions.
- (ii) For the purpose of the additional weeks annual leave provided by the NES, a shiftworker is defined as an Employee who:
 - (1) is regularly rostered over seven days of the week and regularly works on weekends; or
 - (2) works at least ten Saturdays and at least ten Sundays in any one leave year

To avoid any doubt, this means that an Employee who is a shiftworker for the purposes of clause 2(a)(ii)(1) or 2(a)(ii)(2) above is entitled to five weeks of paid annual leave for each year of service with their Employer.

(3) Aged Care Employees

- (i) In addition to the 4 weeks annual leave set out at clause 31(1) a shiftworker (as defined) is entitled to an additional week of annual leave on the same terms and conditions.
- (ii) For the purposes of the NES a shiftworker is defined as:
 - (1) an Employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work as a day worker as defined in clause 2;
 - (2) and/or an Employee who works ordinary hours on 10 or more weekends.
- (iii) For the purpose of the clause (b)(ii), a weekend means work in ordinary time on a Saturday and/or a Sunday in any one calendar week. All leave accrued under this clause will be added the Employees annual leave with entitlement to the applicable annual leave loading of 17.5%.
- (iv) 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.

Annual Leave Exclusive Of Public Holidays

- (5) Annual leave taken shall be exclusive of public holidays.

(a) Nurses

PROVIDED THAT a shift worker, including a part-time shift worker, shall have added to the entitlement to annual leave one additional day for each public holiday, irrespective of whether or not the public holiday falls on a day which, for that Employee, would have been a rostered day off.

Notwithstanding sub clause (4) above, a part-time shift worker whose place on a roster does not rotate shall have added to the entitlement to annual leave only an additional day for each public holiday that falls on a day the Employee is rostered to work.

(b) Aged Care Employees

- (a) For Employees who do not work on a roster, the period of annual leave excludes any Public Holidays to which the Employee is entitled. If a Public Holiday falls within an Employee's period of annual leave and is on a day that the Employee would have been at work, the Employee will have added to their annual leave a leave amount equivalent to the ordinary time which the Employee would have worked if the day had not been a holiday.

- (b) For a full-time Employee required to work in accordance with a roster, that Employee will receive in addition to their period of annual leave, annual leave equivalent to one day for each Public Holiday to which they are entitled, whether or not the holiday is observed on a day which, for that Employee, would have been a rostered day off.

A part-time Employee, who works on a roster, will receive an additional day of annual leave for each Public Holiday that occurred on a day they were rostered to work.

However, this sub-clause will not apply if the holiday falls on a Saturday or Sunday or where by agreement between the Employer and Employee, an Employee has been paid the appropriate rate of pay for a Public Holiday.

Annual Leave May Be Taken In More Than One Period

- (6) Annual leave is to be granted and taken in one consecutive period, or any combination of periods agreed between the Employer and Employee.

PROVIDED THAT, annual leave taken as single days, shall not exceed five in any calendar year.

Employees shall not be required to take annual leave during any period of shutdown except by mutual consent.

Time of Taking Leave

- (a) (Paid annual leave may be taken for a period agreed between an Employee and the Employer, provided that the Employee complies with the Employer's notification and approval requirements. The Employer will 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 (b).
- (b) Where an Employee has accrued more than 8 weeks paid annual leave, (10 weeks in the case of shiftworkers as defined in this clause), such Employee has accrued excess annual leave (**Excess Leave**). In the circumstances of Excess Leave, annual leave shall be given at a time fixed by the Employer after not less than eight weeks' and not more than 12 months' notice to the Employee, provided

- (i) 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 six weeks within a period of six months (**leave reduction plan**);
- (ii) 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.
- (iii) 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 six weeks.

Payment for Period of Leave

- (7)
 - (a) Employees shall receive their ordinary pay during all periods of annual leave. Employees may request that before going on leave, such leave be paid in advance, otherwise the leave will be paid in the normal pay fortnights for the period of such leave.
 - (b) For an Aged Care Employee, in addition to the entitlement provided for in paragraph (7) (a) above, an Employee will be paid the ordinary rate of pay of pay plus a loading of 15 per cent for any holiday leave provided for in paragraphs 5(b)(b) above.

Proportionate Leave on Termination of Employment

- (8) 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.

Annual Leave Loading

- (9) For any period of annual leave an Employee is to be paid a loading, calculated as follows

Day Worker (Aged Care Employees not working a roster)

- (a) an Employee who, if not taking annual leave would otherwise have worked on day work only, a loading of 17.5% of the Employee's ordinary rate of pay, and in addition will include any higher duty allowance or other all-purpose payment to which the Employee is entitled;

Shift Worker/ Aged Care Rostered Employees

- (b) an employee who, if not taking annual leave would otherwise have worked on shift work only, a loading of 17.5% of the employee's ordinary rate of pay, and in addition will include any higher duty allowance or other all-purpose payment to which the Employee is entitled.

PROVIDED THAT an Employee who would have received shift penalties as specified in Clause 29 or 30 had the Employee not been on annual leave during the relevant period, and such payments would have been greater than a

loading of 17.5% of the ordinary rate of pay, then the Employee's annual leave loading is to be calculated as an amount equivalent to the shift penalties the employee would have received in accordance with the Employee's projected shift roster.

Maximum Period For Which Loading Is Payable

- (c) The annual leave loading is payable –
 - (i) for day workers – on a maximum period in any one leave year of four weeks annual leave;
 - (ii) for shift workers – on a maximum period in any one leave year of five weeks annual leave.

Calculation of Continuous Service

- (10) Continuous service shall be as defined in s.22 of the Fair Work Act, as amended from time to time.

Annual Leave Exclusive Of Certified Personal Leave

- (11) An Employee who is certified as unfit for duty because of personal illness by a medical practitioner approved by the Employer during a period of paid annual leave, shall be given credit for the time so certified and the paid annual leave is to be extended by the number of days that the Employee has been certified as unfit for duty.

Pay in lieu of an amount of annual leave

- (12) The Employer and Employee will enter into a separate written agreement for each cashing out of a particular amount of annual leave, subject to the following:
 - (a) Paid annual leave must not be cashed out if the cashing out would result in the Employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
 - (b) Where an Employee forgoes an entitlement to take an amount of annual leave, the Employer will pay the Employee the amount of pay that the Employee is entitled to receive in lieu of the amount of annual leave, plus leave loading that would otherwise have been payable;
 - (c) Where an Employee is seeking to cash out in excess of 4 weeks annual leave in any year ("Excess Cash Out Leave"), the Employee must take a corresponding amount of annual leave to the number of weeks of Excess Cash Out Leave, with such leave being taken within 3 months of cashing out the annual leave (subject to operational requirements).

Example: Where an Employee cashes out 5 weeks of annual leave the Employee must take 1 week of annual leave within three months of the annual leave being cashed out in that year, subject to operational requirements.

- (d) Superannuation contributions will be made on annual leave cashed out in accordance with the applicable legislation.

32 PERSONAL LEAVE

- (1) The provisions of this clause apply to full-time and part-time Employees, but do not apply to casual Employees, other than as stated at (7)(e).

Purpose of Personal Leave

- (2) Employees other than casual Employees are entitled to paid personal leave for absences from work due to –
- (a) personal illness or injury (sick leave); or
 - (b) for the purposes of providing care or support for an immediate family or household member that is ill/ injured or in the case of an unexpected emergency.

(3) **Amount of Personal Leave – Full Time Employees**

(a) **Nurses**

A full time Employee is entitled to twenty-three days (174.8 hours referenced to a thirty-eight hour week) of personal leave, except that in the first year of employment the entitlement to personal leave is –

- (i) 22 hours and 48 minutes, plus 12 hours and 40 minutes for each completed month of employment.

(b) **Aged Care Employees**

A full-time Employee is entitled in any one year (whether in the employ of one Employer or of several) to leave in excess of 152 hours in the case of those Employees whose full-time hours are 38 per week (20 working days), provided that in the first year of service an Employee shall only be entitled to 12 hours 40 minutes for each completed month of service in the case of 38-hour week Employees plus the proportion of 12 hours and forty minutes for any uncompleted month.

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. Untaken personal leave accumulates from year to year without limitation.

(4) **Carer's Leave – Immediate Family or Household Member**

- (a) An Employee is entitled to take paid carer's leave in respect of a member of the Employee's immediate family or household member.

(5) **Notice and Evidence Requirements**

(a) **Nurses**

An Employee who is absent from work because of personal illness, or an injury through accident, is entitled to paid personal leave at the Employee's ordinary rate of pay exclusive of shift or weekend loadings or overtime subject to the following –

- (i) Employees are not entitled to paid personal leave for any period of absence in respect of which they are entitled to workers' compensation;
- (ii) Employees must as soon as possible prior to going on personal leave inform the Employer of their inability to attend for duty, and as far as is

reasonable advise the nature of the injury or illness and the estimated duration of the absence;

- (iii) the onus is on Employees to demonstrate to the Employer's satisfaction that they were unable because of illness or injury to attend for duty on the day or days for which personal leave is claimed;
- (iv) untaken personal leave accumulates from year to year without limitation.
- (v) PROVIDED THAT in the first year of service Employees are entitled only to 12 hours 40 minutes personal leave for each completed month of service.

Employees shall be allowed 3 single days of personal leave per fiscal year without certification or statutory declaration. Statutory declarations signed by a Justice of the Peace may be used in lieu of medical certificates for access to personal leave.

(b) Aged Care Employees

Employee Must Give Notice

An Employee shall within 12 hours before commencement of a day shift or 6 hours within commencement of an afternoon or night shift, inform the Employer of his/her inability to attend for duty, and, as far as practicable state the estimated duration of the absence.

Evidence Supporting Claim

- (i) An Employee shall prove to the satisfaction of the Employer that he/she was unable, on account of such illness or injury, to attend for duty on that day or days on which leave is claimed.
- (ii) If an Employee is directed by the Employer to remain at home after a specific illness, however an Employee has received a clearance to return to work from a health professional, no loss of remuneration or personal leave will occur against the Employee.
- (iii) Employees shall be allowed three single days of sick leave per fiscal year without certification or statutory declaration and those days may be taken at any time including either side of days off. The provision may include up to 2 consecutive days.
- (iv) Certification from registered health professionals will be acceptable as proof of illness or injury.
- (v) Provided further that an Employee's entitlement to payment for personal leave for personal injury or sickness upon production of a Statutory Declaration form that is available from the workplace, shall be limited to not more than three occasions in each year in respect to absences not exceeding three consecutive working days duration.
- (vi) When taking leave to provide care or support for members of their immediate family or household who require care or support due to an unexpected emergency, the Employee must, if required by the Employer, establish by production of documentation acceptable to the Employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care or support by the Employee.

Personal Leave and Workers' Compensation

An Employee shall not be entitled to paid leave of absence for any period in respect of which he/she is entitled to workers compensation.

(6) Part-Time Employees

(a) Nurses

Part-time Employees, are entitled to personal leave on the same basis as full-time Employees. In determining the amount of leave to be accumulated for the purposes of sub clause (3), a part-time 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. Untaken personal leave accumulates from year to year without limitation.

(b) Aged Care Employees

Part-time Employees shall have their personal leave entitlement calculated in the following manner:

$152 \text{ (full-time equivalent entitlement)} \div 365 \text{ (calendar days per year)} \times 7 \text{ (days per week)} \div 38 \text{ (full-time equivalent weekly working hours)} = 0.0767 \text{ hours personal leave entitlement for each hour worked.}$

PROVIDED that a part-time 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. Untaken personal leave accumulates from year to year without limitation.

(7) Carer's Leave

Entitlement

- (a) Employees are entitled to use any of their accrued personal leave as carer's leave to cover absences in circumstances where they need to provide care or support to an immediate family or household member.
- (b) The entitlement to use personal leave for the purpose of taking carer's leave is subject to Employees who take carer's leave being responsible for the care or support of the immediate family or household member in respect of whom the absence on carer's leave relates; and

Proof of Absence

- (c) If required by the Employer, Employees are to provide, a medical certificate or some other form of proof confirming the illness of the person for whom they claim paid carer's leave.

Notifying The Employer of Absence on Carer's Leave

- (d) Wherever practicable Employees are to give the Employer prior notice of the need for them to take carer's leave and the estimated period of absence on carer's leave, but where this is not practicable Employees must inform the Employer as soon as possible on the first day of any such absence.

Unpaid Carer's Leave

- (e) Employees (including casuals) are entitled to a period of up to two days unpaid carer's leave for each occasion. The Employer may require production of a medical certificate or statutory declaration establishing the need for the Employee to provide care or support for them during that time and the estimated length of absence. An Employee cannot take unpaid carer's leave during a particular period if the Employee could instead take paid personal/carer's leave.

33 COMPASSIONATE LEAVE

- (a) An Employee is entitled to 3 days of compassionate leave for each occasion (*a permissible occasion*) when a member of the Employee's immediate family, or a member of the Employee's household:
- (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
 - (ii) sustains a personal injury that poses a serious threat to his or her life; or
 - (iii) dies.
- (b) 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 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) Where the Employee is involved in funeral arrangements, travelling etc., leave may be allowed for up to three days for each permissible occasion.
- (e) 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.
- (f) 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.
- (g) The Employee, if required by the Employer, shall supply relevant evidence of the requirement for such leave.

34 PARENTAL LEAVE

- (1) Subject to the terms of this clause Employees are entitled to paid parental leave and to work part-time in connection with the birth or adoption of a child.

- (2) The provisions of this clause apply to full-time, part-time and eligible casual Employees, but do not apply to other casual Employees. The paid leave and other payment entitlements set out at (7) apply only to eligible permanent Employees.
- (3) An eligible casual Employee means a casual Employee:
- (a) employed by the Employer on a regular and systematic basis for a sequence of periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and
 - (b) who has a reasonable expectation of ongoing employment, but for the pregnancy or the decision to adopt.
- (4) For the purposes of this clause, continuous service is work for an Employer on a regular and systematic basis (including any period of authorised leave or absence).
- (5) An Employer must not fail to re-engage a casual Employee because:
- (a) the Employee or Employee's spouse is pregnant; or
 - (b) the Employee is or has been immediately absent on parental leave.
- (6) The rights of an Employer in relation to engagement and re-engagement of casual Employees are not affected, other than in accordance with this clause.
- (7) Paid Leave and payments available are summarised in the below table. An eligible permanent Employee may access either primary carer leave (maternity/ Adoption) or partner/ secondary carer leave for the birth/ placement of a child.

Type of Leave	Paid Leave	"Top Up" Payment	"Lump Payment" Sum
Maternity Leave/ Adoption Leave – Primary Carer	4 weeks	Where the Employee is in receipt of payments in accordance with the <i>Paid Parental Leave Act 2010</i> (Government Payment) the Employer will make a payment, representing the difference between the Government Payment and the Employee's ordinary rate of pay per week (Top Up Payment). The Top Up Payment will be paid for a total period of four weeks.	Where the Employee has received paid 'Maternity/ Adoption Leave' as the primary carer, the Employee will be paid an additional 'lump sum pay' equating to two (2) weeks' pay at the ordinary rate of pay, where the Employee has returned to work for a period of at least 8 weeks after the conclusion of the paid/ unpaid period of Maternity/ Adoption Leave.
Paternity/Partner Leave	2 week	Not applicable	

Adoption Leave - Secondary Care Giver	2 week	Not applicable	

(7A) Notwithstanding the paid entitlement set out in the table at (7) above, where an employee:

- (1) who was employed prior to 4 November 2014; and
 - (2) would have been entitled to a greater paid leave entitlement than that set out above at clause 34(7),
such employee shall be entitled to the more generous paid leave entitlement in lieu of the paid leave set out at clause 34(7).
- (a) If paid parental leave is provided by this Agreement it will apply in relation to each birth or adoption, regardless of whether the Employee has returned to work from unpaid or paid parental leave granted in respect to a previous birth or adoption. Where an Employee becomes pregnant or adopts again they will be entitled to request a new period of unpaid parental leave and be entitled to a new period of paid parental leave in accordance with clause (7) above.
 - (b) If paid leave is provided the Employee may nominate how any paid parental leave provided under this Agreement will be paid in conjunction with the paid leave provided under the Commonwealth Paid Parental Leave Scheme. The Commonwealth Scheme entitlement is in addition to any amount payable under this Agreement and the Employee may choose whether the Employer provided entitlement will be taken either simultaneously, contiguously or in any other combination with the Commonwealth provided payment. The Employee will nominate a preferred payment arrangement at least four weeks prior to the expected date of delivery.
 - (c) An Employee who will be the primary care giver of an adopted child or who is responsible for a child as the primary carer as defined under the Commonwealth Paid Parental Leave Scheme or is a permanent carer under a permanent care order made by the Children's or Family Court and who commences adoption or primary carer leave is, subject to the above continuity of service requirements, entitled to the payment of any paid leave included in this Agreement from the date that the child is placed with the Employee.

(14) Right to request

- (a) An Employee entitled to unpaid parental leave under the Fair Work Act:
 - (i) may extend the period of unpaid parental leave provided for in section 70 of the Fair Work Act by a further continuous period of leave not exceeding 12 months with any further extensions being by agreement with the Employer;
 - (ii) may request a change in working arrangements in accordance with section 65 of the Fair Work Act
to assist the Employee in reconciling work and parental responsibilities.
- (b) The Employer shall consider the any request having regard to the Employee's circumstances and provided the request is genuinely based on the Employee's parental responsibilities may only refuse the request on reasonable grounds related to the effect on the workplace or the Employer's

business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

- (c) Employee's request and Employer's decision to be in writing

The Employee's request and the Employer's decision made under sub-paragraph (14)(a)(ii) must be in writing. The Employer's response, including details of the reasons for any refusal, must be given as soon as practicable and no later than 21 days after the request is made.

- (d) Request to return to work part-time

A request under sub-paragraph 14(a)(ii) must be made as soon as possible but no less than seven weeks prior to the date upon which the Employee is due to return to work from parental leave.

- (e) Variation of period of parental leave

Unless agreed otherwise between the Employer and Employee, where an Employee takes leave under section 70 of the Fair Work Act and sub-paragraph (14)(a)(i) an Employee may apply to their Employer to change the period of parental leave on one occasion. Any such change must be notified in writing at least two weeks prior to the start of the changed arrangements.

- (20) Pre-natal appointments or parenting classes

If an Employee is required to attend pre-natal appointments or parenting classes and such appointments or classes are only available or can only be attended during the ordinary rostered shift of an Employee, then on production of satisfactory evidence of attendance at such appointment or class, the Employee may access his or her accrued personal leave. The Employee must give the Employer prior notice of the Employee's intention to take such leave.

35 PUBLIC HOLIDAYS

Entitlement to Paid Public Holidays

- (1) Subject to the provisions of this Agreement employees, other than casual Employees, are entitled to paid public holidays for Christmas Day, Boxing Day, New Year's Day, Australia Day, Hobart Regatta Day (South of Oatlands), Eight Hours Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day, and the first Monday in November where Hobart Regatta Day is not observed, or such other day(s) which may be observed in the locality in lieu of or made additional to any of the aforementioned holidays, as per the Tasmanian *Statutory Holidays Act 2000* as amended.
- (2) Payment for public holidays taken and not worked is to be at the rate of pay to which the Employee would have been entitled if at normal work on that day.
- (3) In circumstances where an Employee is required to work on a public holiday which applies at the Employee's usual workplace, but the Employee is working away from the usual workplace and at a location where that public holiday does not apply, an additional day is to be added to the Employee's annual leave entitlement, or the Employee may elect to take another working day in lieu of that public holiday.
- (4) Where an Employee who is entitled to a holiday with pay and is required to work on any of the holiday, either for part or the whole of the day they will be paid as follows:
 - (i) Nurses
Day workers – will be paid at the rate of double time and a half as set out at Clause 27(4)(c);

Shiftworkers – will be paid at the rate of double time as set out at Clause 29(4)(b);

Casual - will be paid at the rate of 2.25 times the ordinary rate of pay for each hour worked (in lieu of the casual loading).

(ii) Aged Care Employees

Day workers – will be paid at the rate of double time and a half as set out at Clause 27A;

Rostered Employees – will be paid at the rate of double time and a half, however this does not apply where the Employee receives holiday leave in accordance with Clause 31(5)(b) in which case the Employee will be paid the ordinary hourly rate for each hour worked plus the roster loading.

Casual - will be paid at the rate of 2.5 times the ordinary rate of pay for each hour worked (in lieu of the casual loading).

- (5) Where work commences between 11.00pm and midnight on a holiday with pay the time worked before midnight will not entitle the Employee to the payment detailed in subclause (4) above.

Time worked by an Employee before midnight on a day preceding a holiday with pay, and extending into the holiday with pay, the time worked before midnight will be regarded as time worked on a holiday.

36 LONG SERVICE LEAVE

- (1) The provisions of the *Long Service Leave Act 1976* (as amended) will apply to Employees covered by this agreement.
- (2) The taking of the period of Long Service Leave shall be by mutual agreement. If there is no mutual agreement, leave is to be taken, at a time fixed by the Employer, within a period not exceeding six months from the date when the entitlement is due and after not less than two weeks' notice to the Employee.

37 BLOOD DONORS LEAVE AND EMERGENCY SERVICE LEAVE

- (1) An Employer will release full-time Employees upon request on a maximum of two occasions per year to donate blood in paid time at a nominated time where a mobile collection unit or donor collection centre is located within five kilometres of the aged care facility. Employees will give at least seven days notice to the Employer and such release will take into account the staffing and workload needs of the facility.
- (2) In addition to the unpaid community services leave set out in the NES, at the discretion of the Employer, whose discretion will be exercised on the basis of operational requirements and what is reasonable in a particular circumstance, the Employer will facilitate an Employee who is a member of a voluntary emergency relief organization such as the, Tasmanian Fire Service, Red Cross, St John Ambulance and the State Emergency Service to be released from normal duty without loss of pay (up to a maximum of three shifts per year) to assist in regard to a critical incident where a local or state emergency situation arises that requires the attendance of the Employee.

38 JURY SERVICE

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- (1) An Employee other than a casual Employee, required to attend for jury service during his or her ordinary working hours shall be reimbursed by the Employer an amount equal to the difference between the amount paid in respect of his or her attendance for such jury service and the amount of ordinary salary he or she would have received in respect of the ordinary time he or she would have worked had he or she not been on jury service. The period of payments of jury service shall be limited to the period prescribed under relevant legislation.
- (2) An Employee shall notify his or her Employer as soon as possible of the date upon which he or she is required to attend for jury service. Further the Employee shall give his or her Employer proof of his or her attendance at the court, the duration of such attendance and the amount received in respect of such jury service.

39 UNION TRAINING LEAVE

- (1) It is recognised that union delegates or elected workplace representatives, with approval of the Union may participate in the following duties free from any discrimination in their employment when it is required to do so:
- (i) Represent members in bargaining;
 - (ii) Represent the interests of members to the Employer and at times industrial tribunals;
 - (iii) Consult with union members and other Employees for whom the delegate is a bargaining representative;
 - (iv) Participate in the operation of the Union which includes representing members on workplace issues;
 - (v) Represent members on any relevant consultative committee at the workplace.
 - (vi) Attend union education;
 - (vii) Address new Employees about the benefits of union membership at the time that they enter employment;
 - (viii) Attend courses conducted by an approved training provider, that are designed to provide skills and competencies that will assist the delegate or workplace representative contribute to the prompt resolution of disputes and or grievances in the workplace;
 - (ix) Attend union annual Delegates Conference
- (2) It is recognised that union training leave is unpaid however, the Employee may elect to utilise accrued annual leave in accordance with the annual leave provisions of this Agreement.
- (3) Any request for leave to attend union training, the Employee must submit their request in writing with one months' notice prior to the commencement of the union training to the Employer. Approval of the leave request shall be on the basis that the Employer agrees to release the delegate from their normal roster if the delegate was rostered to work during the time of leave.

- (4) The granting of any leave pursuant to this clause shall be subject to the Employer being able to make adequate staffing arrangements amongst current Employees during the period of such leave. The Employer shall not use this subclause to avoid an obligation under this clause.
- (5) Leave of absence granted pursuant to this clause, shall count as service for all purposes of this Agreement.
- (6) All expenses (such as travel, accommodation and meals) associated with or incurred by the Employee attending a training course as provided in this clause shall be the responsibility of the Employee or the Union.
- (7) An Employee may be required to satisfy the Employer of attendance at the course to qualify for leave.
- (8) An Employee granted leave pursuant to this clause shall, upon request, inform the Employer of the nature of the course attended and their observations on it.
- (9) In the event of a disagreement arising from the outcome of this clause, the matter may be settled using the dispute settlement procedures of the agreement.

40 LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE

- (1) This clause applies to all Employees, including casuals.

(2) Definitions

- (a) In this clause:

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

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; or
 - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee; or
 - (iii) a person related to the Employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family member in clause (2)(a) includes a former spouse or de facto partner.

(3) Entitlement to leave

- (a) A full-time or part-time Employee is entitled to 5 days' paid leave and a casual Employee is entitled to 5 days' unpaid leave to deal with family and domestic violence, as follows:
 - (i) the leave is available in full at the start of each 12 month period of the Employee's employment; and
 - (ii) the leave does not accumulate from year to year; and
 - (iii) is available in full to part-time Employees.
- (b) A period of leave to deal with family and domestic violence may be less than a day by agreement between the Employee and the Employer.

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- (c) The Employer and Employee may agree that the Employee may take more than 5 days' leave to deal with family and domestic violence.

(4) Taking leave to deal with family and domestic violence

- (a) An Employee may take the leave set out at clause 40(3) to deal with family and domestic violence if the Employee:
- (i) Is experiencing family and domestic violence; and
 - (ii) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the Employee to do that thing outside their ordinary hours of work.
- (b) The reasons for which an Employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

(5) Service and continuity

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

(6) Notice and evidence requirements

(a) Notice

An Employee must give the Employer notice of the taking of leave by the Employee under this clause. The notice:

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

(b) Evidence

- (i) An Employee who has given the Employer notice of the taking of leave under this clause must, if required by the Employer, give the Employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause (4).
- (ii) Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

(7) Confidentiality

- (a) Employers must take steps to ensure information concerning any notice an Employee has given, or evidence an Employee has provided under clause (6), is treated confidentially, as far as it is reasonably practicable to do so.
- (a) Nothing in clause (7) prevents the Employer from disclosing information provided by an Employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the Employee or another person.

Note: Information concerning an Employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the Employee. The Employer may consult with such Employees regarding the handling of this information.

(8) Compliance

An Employee is not entitled to take leave under clause 40 unless the Employee complies with clause 40.

PART F – EDUCATION AND PROFESSIONAL DEVELOPMENT

41 EDUCATION AND PROFESSIONAL DEVELOPMENT

(1) Full time Employees shall be entitled to three (3) days paid study / examination / conference leave per annum for the purposes of attending courses, conferences and/or undertaking or preparing for examinations in a relevant course of study relevant to their work at the facility and is conducted by a recognised institution or training organisation. Part time Employees who work not less than four (4) shifts per fortnight shall be entitled to leave under this clause, on a pro rata basis.

(2) Leave entitlements pursuant to this clause shall not accumulate from year to year.

(3) Study Leave shall be taken at a time that is mutually agreed between the Employer and the Employee. The Employer shall not unreasonably withhold approval for such leave subject to:

- (a) The Employee having been employed by the facility or network for eighteen months immediately prior to the taking of the leave.
- (b) The leave be granted for studies which are related to the classification duties in the Agreement, relevant to advancement through the career structure and to employment at the establishment and would normally be undertaken in a tertiary institution.

PROFESSIONAL DEVELOPMENT LEAVE

(4) The Employer shall ensure that operating budgets make reasonable provision for the ongoing professional development of full time nursing staff. The Employer will encourage staff to attend relevant seminars and conferences on a regular basis. Costs may be either shared or paid for in total by the Employer or release from work provided at the discretion of the Employer.

EDUCATION AND TRAINING

(5) All Employees have a responsibility to maintain and upgrade their skills commensurate with the requirements of their position. In particular every Employee must attend training required to meet statutory responsibilities including but not limited to: fire and emergency training, manual handling training, infection control, food handling provided by the Employer in each twelve month period or as required.

(6) Where the Employee attends compulsory training other than during the course of a rostered shift, the minimum payment shall be the length of the training or one (1) hour whichever is the greater, where the training has been scheduled at the start or finish of a shift for which the Employee is rostered.

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- (7) Attendance at any training course other than those referred to at (6) above, may be supported by the Employer in accordance with specific policy initiatives. In particular, the parties acknowledge that it is highly desirable for Employees to attend training provided by the Employer.
 - (8) Where the Employer has implemented or is participating in a no lift training program every Employee must attend the training required.

PART G – ANCILLARY AND DISPUTE SETTLEMENT

42 NOTICE BOARD

The Employer is to permit a notice board to be erected in the workplace(s) for the use of Employees and their workplace representatives.

43 CONSULTATION

- (1) This term applies if 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.
- (2) The Employer must consult the Employees to whom the agreement applies about:
 - (a) a major workplace change that is likely to have a significant effect on the Employees; or
 - (b) a proposal to introduce a change to their regular roster or ordinary hours of work.
- (3) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
 - (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - (b) the Employee or Employees advise the Employer of the identity of the representative;the Employer must recognise the representative.
- (5) As soon as practicable after making its decision, the Employer must
 - (a) discuss with the relevant Employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the Employees; and

- (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- (b) for the purposes of the discussion — provide, in writing, to the relevant Employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the Employees; and
 - (iii) any other matters likely to affect the Employees.
- (c) Notwithstanding (5)(a) and (b), for a change to the Employees' regular roster or ordinary hours of work, the Employer is required to:
 - (i) to provide information to the Employees about the change; and
 - (ii) to invite the Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities); and
 - (iii) to consider any views given by the Employees about the impact of the change.
- (6) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (7) The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- (8) If a term in the enterprise 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 subclauses (2),(3) and (5) are taken not to apply.
- (9) 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.
- (10) In this term, ***relevant Employees*** means the Employees who may be affected by the major change.

44 DISPUTE RESOLUTION PROCEDURE

- (1) In the event of a dispute in relation to a matter arising under this Agreement or the NES (including subsections 65(5) or 76 (4) of the Fair Work Act, 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 local management as appropriate.

- (2) A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute at any time.
- (3) If the grievance is still unresolved, the matter shall be referred to the Senior Manager of the organisation, however titled and a meeting arranged.
- (4) The above steps shall take place within seven days or such longer period as may be mutually agreed.
- (5) If a dispute in relation to a matter arising under the Agreement 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 mediation and/or conciliation and, where the matter in dispute remains unresolved, arbitration. 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.
- (6) It is a term of this agreement that while the dispute resolution procedure is being conducted work shall continue normally according to the custom or practice existing before the change or omission that gave rise to the grievance until either the grievance is resolved or, if referred to the FWC, up to the first hearing and then subject to any direction of the FWC. No party shall be prejudiced by the continuation of work. Health and safety matters are exempted from this clause.
- (7) The decision of the FWC will bind the parties, subject to either party exercising a right of appeal against the decision to a Full Bench.
- (8) 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.

45 DISCIPLINARY PROCEDURE

- (a) Where disciplinary action may be necessary, the management representative shall notify the Employee of the issues in writing and the Employee will be given an opportunity to respond to these issues. In the event that the Employee's response is unsatisfactory, a first warning in writing may be issued. This warning will be recorded on the Employee's personnel file.
- (b) If there are further performance or conduct issues, the Employee will again be notified in writing of the matter and a response requested from the Employee. If appropriate, a second warning in writing will be given to the Employee and recorded on the Employee's personnel file.
- (c) In the event that there are further performance or conduct issues, the Employee will again be notified in writing of the matter and a response requested. If appropriate, a final written warning will be issued to the Employee and recorded on the Employee's personnel file.
- (d) In the event there are further performance or conduct issues, then the Employee may be terminated after the matters have been investigated and reasons sought from the Employee.


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- (e) Summary dismissal of an Employee may still occur for acts of 'serious misconduct' (as defined in the Fair Work Act 2009 (Cth)). Where an allegation of 'serious misconduct' is proven and the Employer, having considered all the circumstances does not wish to terminate the Employee's employment, a warning may be issued under paragraph (b) or (c) of this provision.
 - (f) During all steps in the Disciplinary Procedure, the Employee has the right to representation of his or her choice, including the ANMF or HSU. The Employer may be represented by the representative of their choice.
 - (g) Records relating to disciplinary procedures will be disregarded where a continuous period of 12 months elapses without further warning/s. Records relating to disciplinary procedures will be removed from the personnel file after a period of two (2) years where no further warning/s arise.
 - (h) This clause shall not apply until the Employee has completed a period of employment with the Employer of the minimum employment period prescribed in the Fair Work Act.

46 NO PRECEDENT

This agreement must not be used by any party as a precedent.

DECLARATION AND SIGNATURES

I am authorised to sign this Agreement on behalf of Japara Administration Pty Ltd


SIGNATURE _____ Name Valeria Camara

Group Executive - People & Development
Authority to sign the Agreement (Title)

Address: Q1 1 SouthBank Boulevard
Southbank Vic 3006

Date: 24-04-2019

I am authorised to sign this Agreement as the nominated employee bargaining representative

SIGNATURE

PRINT NAME AND TITLE

Address:

Date

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

SIGNATURE

S-LLOYD TAB BRANCH PRESIDENT
PRINT NAME AND TITLE

Address: 182 MACQUEEN ST, HOBART

Date

17/4/19

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

SIGNATURE

PRINT NAME AND TITLE

Address:

Date

SCHEDULE 1 – SALARY RATES

An Employee engaged or promoted to a position within a classification or level prescribed in this agreement shall be paid the salary specified as follows (the ordinary rate of pay).

	HOURLY					
	Current	31-Jul-19	30-Jan-20	31-Jul-20	30-Jan-21	31-Jul-21
		1.75%*	1.25%	1.25%	1.50%	1.50%
Classification						
Enrolled Nurse						
1st year of service	25.90	26.55	26.88	27.22	27.63	28.04
2nd year of service	26.45	27.11	27.45	27.80	28.21	28.64
3rd year of service	27.00	27.68	28.02	28.37	28.80	29.23
4th year of service	27.55	28.24	28.59	28.95	29.38	29.82
5th year of service	28.10	28.80	29.16	29.53	29.97	30.42
EN (Medication Endorsed)						
1st year of service	28.52	29.23	29.59	29.96	30.41	30.87
2nd year of service	29.07	29.79	30.17	30.54	31.00	31.47
Registered Nurse - Level 1						
1st year of service	28.37	29.08	29.45	29.81	30.26	30.72
2nd year of service	29.75	30.49	30.87	31.26	31.72	32.20
3rd year of service	31.12	31.90	32.29	32.70	33.19	33.69
4th year of service	32.49	33.30	33.72	34.14	34.65	35.17
5th year of service	33.86	34.71	35.14	35.58	36.12	36.66
6th year of service	35.23	36.12	36.57	37.02	37.58	38.14
7th year of service	36.61	37.52	37.99	38.47	39.04	39.63
8th year of service	37.98	38.93	39.42	39.91	40.51	41.11
Registered Nurse - Level 2						
1st year of service	39.35	40.33	40.84	41.35	41.97	42.60
2nd year of service	40.27	41.27	41.79	42.31	42.95	43.59
3rd year of service	41.18	42.21	42.74	43.27	43.92	44.58
4th year of service	42.10	43.15	43.69	44.23	44.90	45.57
Registered Nurse - Level 3						
1st year of service	43.81	44.91	45.47	46.04	46.73	47.43
2nd year of service	44.84	45.96	46.54	47.12	47.82	48.54
3rd year of service	45.87	47.02	47.60	48.20	48.92	49.66
4th year of service	46.90	48.07	48.67	49.28	50.02	50.77
Registered Nurse - Level 4						
Grade 1 (0-60 beds)	52.39	53.70	54.37	55.05	55.87	56.71
Grade 2 (61-90 beds)	52.39	53.70	54.37	55.05	55.87	56.71
Grade 3 (91-120 beds)	52.39	53.70	54.37	55.05	55.87	56.71
Grade 4 (121 beds and above)	56.39	57.80	58.52	59.25	60.14	61.04
Registered Nurse - Level 5						
Grade 1 - Bed capacity 1-30	52.39	53.70	54.37	55.05	55.87	56.71
Grade 2 - Bed capacity 31-60	56.39	57.80	58.52	59.25	60.14	61.04
Grade 3 - Bed capacity 61-90	60.39	61.90	62.68	63.46	64.41	65.38
Grade 4 - Bed capacity 91-120	64.97	66.59	67.42	68.26	69.29	70.33

*Adjusted rate.

		FFPPOA	FFPPOA	FFPPOA	FFPPOA	FFPPOA	FFPPOA
		Current	31-Jul-19	30-Jan-20	31-Jul-20	30-Jan-21	31-Jul-21
Classification	Pay Scale Level		1.75%	1.25%	1.25%	1.50%	1.50%
Admin Employee							
Admin Employee - Entry	1	20.97	21.34	21.61	21.88	22.21	22.54
Admin Employee - L1A	2	21.84	22.22	22.50	22.78	23.12	23.47
Admin Employee - L1b to 3B	3	23.17	23.57	23.87	24.17	24.53	24.90
Admin Employee - L4	4	23.64	24.05	24.35	24.66	25.03	25.40
Admin Employee - L5	5	24.37	24.79	25.10	25.42	25.80	26.19
Admin Employee - L6	6	25.16	25.60	25.92	26.24	26.64	27.03
Admin Employee - L7	7	26.42	26.88	27.22	27.56	27.97	28.39
PCW/ECA Employee							
PCW/ECA Employee - L2	3	22.70	23.09	23.38	23.68	24.03	24.39
PCW/ECA Employee - L3	4	22.97	23.38	23.67	23.96	24.32	24.69
PCW/ECA Employee - L4	5	23.73	24.15	24.45	24.76	25.13	25.50
PCW/ECA Employee - L5	6	25.02	25.46	25.78	26.10	26.49	26.89
Leisure & Lifestyle Employee							
Leisure & Lifestyle Employee - L5	6	25.02	25.46	25.78	26.10	26.49	26.89
Service Employee							
Service Employee - L1	1	20.97	21.34	21.61	21.88	22.21	22.54
Service Employee - L2	2	21.84	22.22	22.50	22.78	23.12	23.47
Service Employee - L3	3	22.70	23.09	23.38	23.68	24.03	24.39
Service Employee - L4	4	22.97	23.38	23.67	23.96	24.32	24.69
Service Employee - L5	5	23.73	24.15	24.45	24.76	25.13	25.50
Service Employee - L6	6	25.02	25.46	25.78	26.10	26.49	26.89
Service Employee - L7 & L8	7	25.48	25.92	26.24	26.57	26.97	27.38

SCHEDULE 2 – ALLOWANCES

		FFPPOA	FFPPOA	FFPPOA	FFPPOA	FFPPOA
	Current Rate	31-Jul	30-Jan	31-Jul	30-Jan	31-Jul
		2019	2020	2020	2021	2021
		1.75%	1.25%	1.25%	1.50%	1.50%
NURSES						
In Charge Allowance	33.18	33.76	34.18	34.61	35.13	35.66
Meal Break When Required to work Overtime	14.34	14.59	14.77	14.96	15.18	15.41
(meal to be provided or allowance paid)	11.95	12.16	12.31	12.47	12.65	12.84
Remote Call						
Per hour	1.55	1.58	1.60	1.62	1.64	1.67
Min. payment per day or per shift	15.78	16.06	16.26	16.46	16.71	16.96
Uniform Allowance	<i>Date of Approval</i>					
Nurses: Uniform Allowance (except for periods of absence on long service leave and absence on personal/carers leave beyond 21 days.)	7.97	8.11	8.21	8.31	8.44	8.56
AGED CARE EMPLOYEES						
Nauseous Linen Allowance (Aged care only)-						
Minimum per week	2.49	2.53	2.57	2.60	2.64	2.68
Foul and Nauseous Linen - Part-time/Casual employees	0.47	0.48	0.48	0.49	0.50	0.51
Uniform Allowance						
Aged Care Employees: Uniform Allowance (except for periods of absence on long service leave and absence on personal/carers leave beyond 21 days.)	7.97	8.11	8.21	8.31	8.44	8.56
Overtime Meal Allowance -	13.72	13.96	14.13	14.31	14.53	14.74
Remote Call Allowance -						
Remote Call Allowance	1.10	1.12	1.13	1.15	1.16	1.18

SCHEDULE 3 – CLASSIFICATIONS

Nursing Classifications

- (1) **Student/Trainee Enrolled Nurse** means an employee undergoing an approved training course in enrolled nursing under the provisions of the *Health Practitioner Regulation National Law (Tasmania) Act 2010*.
- (2) **Enrolled Nurse** means a nurse enrolled as such with the AHPRA under the provisions of the *Health Practitioner Regulation National Law (Tasmania) Act 2010*.
- (3) **Enrolled Nurse – medication-endorsed** means an Enrolled Nurse holding an endorsement to administer medications issued by the AHPRA and who is required by the Employer to so administer medications.
- (4) **Registered Nurse** means a nurse registered as such with the AHPRA under the provisions of the *Health Practitioner Regulation National Law (Tasmania) Act 2010*.
- (5) **Registered Nurse – Level 1** means a Registered Nurse who is not otherwise classified within a Level of registered nurse positions.
- (6) **Registered Nurse – Level 2** means a Registered Nurse who is engaged as such; and
 - (a) has demonstrated competence in basic nursing practice and the ability to provide direct care in more complex nursing care situations; and
 - (b) has the ability and skills to provide guidance to Level 1 Registered Nurses; and
 - (c) is employed within a care unit.
- (7) **Registered Nurse – Community Health/Domiciliary** means a Registered Nurse employed in this setting and who is not otherwise classified.
- (8) **Registered Nurse – Level 3** means a Registered Nurse who is engaged as such, and may be referred to as Clinical Nurse Consultant, Nurse Manager, or Staff Development Nurse.
- (9) **Registered Nurse – Level 3A** means a Registered Nurse engaged as such who may be referred to as the after hours supervisor, and is accountable for the overall provision of resident care and the management of resources.
- (10) **Registered Nurse – Level 4** means a Registered Nurse who is engaged as such and may be referred to as Assistant Director of Nursing – Care, Assistant Director of Nursing – Management, or Assistant Director of Nursing – Staff Development.
 - (a) An **Assistant Director of Nursing – Clinical Care** is responsible for the formulation, co-ordination and direction of policies for nursing practice, and is accountable for the standard of nursing care in an assigned number of clinical care units.
 - (b) An **Assistant Director of Nursing – Management** is responsible and accountable for management resources in an assigned number of management.

(c) An **Assistant Director of Nursing – Staff Development** is responsible for the co-ordination, development and evaluation of post-basic education courses approved by the AHPRA, or staff development programs.

- (11) **Registered Nurse – Level 5** means a Registered Nurse who is engaged as Director of Nursing and as a member of the executive management team is responsible and accountable for the overall co-ordination of nursing.

Aged Care Employee Classifications:

Aged care employee—level 1

Entry level:

An employee who has less than three months' work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

General and administrative services	Food services
General clerk Laundry hand Cleaner Assistant gardener	Food services assistant

Aged care employee—level 2

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
General clerk/Typist (between 3 months' and less than 1 year's service)	Food services assistant	Personal care worker grade 1

General and administrative services	Food services	Personal care
Laundry hand Cleaner Gardener (non-trade) Maintenance/Handyperson (unqualified) Driver (less than 3 ton)		

Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
General clerk/Typist (second and subsequent years of service) Receptionist Pay clerk Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate	Cook	Personal care worker grade 2 Recreational/Lifestyle activities officer (unqualified)

Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
Senior clerk Senior receptionist Maintenance/Handyperson (qualified) Driver (3 ton and over) Gardener (trade or TAFE Certificate III or above)	Senior cook (trade)	Personal care worker grade 3 Community and Home Based Care Employees.

Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services	Food services	Personal care
Secretary interpreter (unqualified)	Chef	Personal care worker grade 4

Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services	Food services
Maintenance tradesperson (advanced) Gardener (advanced)	Senior chef

Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative Services	Food services	Personal care
Clerical supervisor Interpreter (qualified) Gardener superintendent General services supervisor	Chef /Food services supervisor	Personal care worker grade 5

IN THE FAIR WORK COMMISSION

FWC Matter No:

AG2019/1383

Applicant:

Japara Administration Pty Ltd (**Japara**)

Section 185 – Application for approval of a single enterprise agreement

UNDERTAKINGS

I, Jennifer Anderson, Industrial Relations Manager, for Japara, give the following undertakings in accordance with section 190 of the *Fair Work Act 2009* with respect to the *Japara Administration Pty Ltd Tasmanian Nurses and Aged Care Employees Enterprise Agreement 2018 (the Agreement)*:

1. Clause 23(4) is amended to include the following additional subclause:

(iv) If, on the termination of the Employee's employment, time off for overtime worked by the employee to which clause 23(4) applies has not been taken, the Employer must pay the Employee for the overtime at the overtime rate applicable to the overtime when worked.

2. Clause 32(7)(b) regarding carer's leave conditions will be deleted and not apply under this Agreement.
3. Clause 19(5) regarding part-time employment for aged care employees will be replaced by the following:

(5) Aged Care Employees

- (a) *Before commencing employment, the Employer and Employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day (Agreed Hours).*
- (b) *Notwithstanding the overtime provisions prescribed at the Overtime Clause of the Agreement, a part time Employee may agree to work in excess of their Agreed Hours at the ordinary time rate of pay, provided that:*
 - (i) *such agreement will be recorded in writing (which may be by electronic means):*
 - (ii) *all time worked by a part-time Employee which exceeds 8 hours on a day or afternoon shift (unless the Employee and Employer have mutually agreed to an arrangement where the Employee works a 10 hour shift), or 10 hours on night shift, or 76 hours per fortnight, will be paid at the rate of time and a half for the first two hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the relevant public holiday penalty rates.*
- (c) *No part-time Employee shall be directed to work in excess of their Agreed Hours at the ordinary rate of pay.*
- (d) *Where an Employee works, by agreement, in excess of their Agreed Hours in accordance with this clause, such Employee shall record those additional hours on their timesheet for the corresponding period.*

Jennifer Anderson

Industrial Relations Manager