



# DECISION

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

**Medea Park Association Incorporated T/A Medea Park Residential Care**  
(AG2021/4169)

## **MEDEA PARK ASSOCIATION INCORPORATED NURSES AGREEMENT 2019**

Health and welfare services

COMMISSIONER WILSON

MELBOURNE, 19 APRIL 2021

*Application for approval of the Medea Park Association Incorporated Nurses Agreement 2019.*

[1] An application has been made for approval of an enterprise agreement known as the *Medea Park Association Incorporated Nurses Agreement 2019* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Medea Park Association Incorporated T/A Medea Park Residential Care. 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] The Australian Nursing and Midwifery Federation and the Health Services Union being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers the organisations.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 26 April 2021. The nominal expiry date of the Agreement is 30 May 2021.



COMMISSIONER

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Annexure A




**Medea Park Residential Care Enterprise Agreement 2020**

We have reviewed this information and provide the following undertakings in relation to the Medea Park Association Incorporated Nurses Agreement 2020:

- A. Medea Park Association Incorporated undertakes that Clause 21.7 - Calculation Of Overtime To Be Based On Agreement Rates, is to be read that where the wage rates under the Enterprise Agreement are less than the wage rate calculated with the casual loading in the Nurses Award, then the higher rate of pay will apply for the calculation of overtime.
- B. Medea Park Association Incorporated undertakes that Clause 21(9) - Time Off In Lieu Of Payment For Overtime, should be read as follows:  
  
"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. In addition, any Time Off In Lieu of Payment for Overtime applicable at termination of employment will be paid at the appropriate overtime rate."
- C. Medea Park Association Incorporated undertakes that within Clause 23(2) – Shift Workers, this should be varied to read that an employee will be determined as a Shift Worker if they regularly work on weekends or work at least 20 weekends.
- D. Medea Park Association Incorporated undertakes that where clause 34 – Redundancy, within the Medea Park Association Incorporated Nurses Agreement 2020, states a benefit which is less than the National Employment Standards, then the terms and conditions of the National Employment Standards will apply.

These undertakings are made by Deborah Austen, Chief Executive Officer of the Medea Park Association Incorporation.

  
Deborah Austen  
Chief Executive Officer

Dated 29<sup>th</sup> March 2021

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



## **THE MEDEA PARK ASSOCIATION INCORPORATED**

### **NURSES AGREEMENT 2019**

## **1 TITLE OF AGREEMENT**

This is the Medea Park Association Incorporated Nurses Agreement 2019 (‘the Agreement’).

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### 3 COMMENCEMENT DATE AND PERIOD OF OPERATION

This Agreement will be operational on the seventh day after approval by the Fair Work Commission.

The Agreement shall expire on 30 May 2021 unless otherwise terminated or varied beforehand by the mutual agreement of the parties or operation of law. The Agreement will continue beyond the nominal expiry date, until replaced, or terminated in accordance with the Fair Work Act 2009.

### 4 APPLICATION OF THE AGREEMENT

This Agreement covers the wages and conditions of nursing employees employed by Medea Park Association Incorporated ('the employer').

### 5 PARTIES BOUND BY THIS AGREEMENT

This Agreement is binding on –

- (a) The Australian Nursing and Midwifery Federation, Tasmanian Branch; and
- (b) The Health Services Union, Tasmania Branch; and
- (c) Medea Park Association Incorporated; and
- (d) All nursing employees employed by the employer in positions classified in this Agreement.

### 6 RELATIONSHIP TO THE AWARD

This Agreement applies to the exclusion of all existing awards, federal award, transitional federal award, pre-reform federal award, a modern award, a preserved state agreement and a notional agreement preserving a state award (NAPSA), which but for this Agreement coming into force would have applied to Employees classified in accordance with this Agreement.

### 7 DEFINITIONS

**Afternoon shift** means a shift finishing between 6.00pm and midnight.

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

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

**Day worker** means an employee whose ordinary weekly hours are worked between 7.00am and 7.00pm Monday to Friday.

**Employer** means Medea Park Association Incorporated.

**Executive Staff** means Chief Executive Officer.

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

**Immediate family member** as defined in this Agreement is to be read in conjunction with the *Relationships Act 2003*, and if there is an inconsistency between this Agreement and that Act, that Act will prevail to the extent of the inconsistency.

**Night shift** means a shift finishing after midnight and before 8.00am.

**Part-time employee** means someone, other than a casual employee, engaged to work for fewer hours than an equivalent fulltime employee.

**Part-time shift worker** means a part-time employee who holds a position on a roster as prescribed in clause 22.10 of this Agreement.

**Relevant rate** means the salary for an employee's classification as specified in Schedule 1 of this Agreement.

**Relevant hourly rate** means the salary for an employee's classification as specified in Schedule 1 of this Agreement (the relevant rate) divided by 52 and then divided by 38.

**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.

**Standard Rate** means the minimum wage for a Registered Nurse - level 1 pay point 1.

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

## **8 CONTRACT OF EMPLOYMENT**

- (1) Employment of full time and part-time employees is to be by the fortnight.
- (2) Employees, other than casual employees, are entitled to be paid in respect of any week at their relevant rate as specified in this Agreement, including shift and weekend loadings 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.

## **9 CASUAL EMPLOYEES**

- (1) A casual employee's engagement is by the hour.
- (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.

PROVIDED THAT these provisions may be varied by agreement between the employer and the employee.

- (3) Where the employer has engaged a casual employee in accordance with this clause the employer may give notice of cancellation of the engagement up to twelve hours before the scheduled commencing time in the case of a day shift, and up to six hours before the scheduled commencing time of either an afternoon or night shift.

PROVIDED THAT if the minimum notice of cancellation of the engagement in (3) above is not given the employee is to be paid three hours pay.

- (4) A casual employee whose engagement is cancelled without the minimum notice specified in (3) above and who has incurred child care fees shall, upon providing the employer with documentary proof of the expenditure so incurred, be reimbursed in full.

PROVIDED THAT a claim for reimbursement must be made to the employer no later than four weeks from the date the expenditure was incurred.

- (5) 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.
- (6) Casual conversion of employees:
- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
  - (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this clause.
  - (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
  - (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
  - (e) Any request under this subclause must be in writing and provided to the employer.
  - (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
  - (g) Reasonable grounds for refusal include that:
    - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);
    - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
    - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
    - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
  - (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
  - (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.



- (j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:
  - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- (n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (o) Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (p) An employer must provide a casual employee whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work.
- (q) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in paragraph p

## **10 PART-TIME EMPLOYEES**

- (1) Part-time employees are entitled to paid annual leave, personal leave and public holidays at the relevant rate.
- (2) For work performed on Saturdays, Sundays and public holidays part-time employees are to be paid at the rates specified in Clause 22.
- (3) Where an employee is regularly working more than their specified contract hours, the employee may request that the employer increase their contracted hours. The employer will not unreasonably refuse such a request.

## **11 THIRTY-EIGHT HOUR WEEK/NINETEEN DAY MONTH**

- (1) The employer will retain the thirty-eight hour week in the form of one paid day off in every consecutive period of four working weeks (the 'nineteen day month').
- (2) The paid day off accrued under the nineteen day month is to be rostered to fall on a weekday i.e. Monday to Friday, and the employer will endeavour to ensure that the accrued day off is rostered to fall either the day before or the day after rostered days off.
- (3) Overtime rates, afternoon and night shift allowances, and the additional rates for work performed on Saturdays, Sundays and public holidays shall be calculated at the relevant hourly rate.
- (4) Where on a working day an employee is absent without pay twenty-four minutes for each such day of absence shall be deducted from payment of the employee's accrued day off.

- (5) Days of paid absence on public holidays count toward payment of the accrued day off.
- (6) Where an accrued day off falls on a public holiday a substituted accrued day off shall be granted and taken as soon as possible.

## **12 HOURS OF WORK – DAY WORKERS**

- (1) The ordinary weekly hours of work for full time employees are thirty-eight.
- (2) The ordinary hours of work specified in (1) above are to be worked over five days, Monday to Friday in continuous periods of eight hours per day between 7.00am and 7.00pm.
- (3) Work performed before 7.00am and after 7.00pm, 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 7.00am to 7.00pm have been fewer than thirty-eight in any week, hours worked outside that spread shall be deemed to be part of the employee's ordinary hours of work.

## **13 HOURS OF WORK – SHIFT WORKERS**

- (1) Other than as provided for in (2) and (3) below, the ordinary hours of shift workers are not to exceed –
  - (a) 8 in any one day;
  - (b) 48 in any one week;
  - (c) 88 in 14 consecutive days;
  - (d) 114 in 21 consecutive days; or
  - (e) 152 in 28 consecutive days.
- (2) Notwithstanding (1) above, by agreement between the employer and a majority of the employees in a particular ward or work area, the ordinary hours of work for night shift employees may be extended to ten per day, to be paid at the appropriate shift rate.
- (3) Notwithstanding (1) above, by agreement in writing between an employer and an employee the employee's ordinary hours of work may be extended to a maximum of twelve per day.

PROVIDED THAT such an agreement may be discontinued by either the employer or the employee giving fourteen days written notice.

PROVIDED FURTHER THAT no employee or prospective employee shall be required by the employer to work under the terms of this sub clause as a condition of employment.

- (4) Subject to this Clause shift workers shall work at such times as required by the employer.
- (4) 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**

- (6) The number of rostered hours worked by a part-time shift worker shall not exceed 80 in any one fortnight.
- (7) Where a part-time employee works in excess of those stipulated in (6) above those excess hours are to be paid at double time.

### **Daylight Saving**

- (8) 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**

- (9) 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.

## **14A CLASSIFICATIONS**

### **Definitions**

- (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*, as amended.
- (2) **Enrolled Nurse** means a nurse enrolled as such with the Nursing and Midwifery Board of Australia under the provisions of the *Health Practitioner Regulation National Law (Tasmania) Act 2010*, as amended.
- (3) **Enrolled Nurse – medication-endorsed** means an Enrolled Nurse who is authorised to administer medications under the provisions of the Nursing and Midwifery Board of Australia as an Enrolled Nurse (Division 2) as amended.
- (4) **Registered Nurse** means a nurse registered as such with the Nursing and Midwifery Board of Australia under the provisions of the *Health Practitioner Regulation National Law (Tasmania) Act 2010*, as amended.
- (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 Care – Care, Assistant Director of Care – Management, or Assistant Director of Care – Staff Development.
- (a) An **Assistant Director of Care – 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 care units.
- (b) An **Assistant Director of Care – Management** is responsible and accountable for management resources in an assigned number of management units.
- (c) An **Assistant Director of Care – Staff Development** is responsible for the co-ordination, development and evaluation of post-basic education courses approved by the Nursing and Midwifery Board of Australia, or staff development programs.

## **14B SALARIES**

### **Salary Increases During The Life Of This Agreement**

- (1) The current wage rates are detailed in schedule 1.
- (2) PROVIDED THAT during the life of this Agreement, national wage review decisions increasing the rates of pay in the Nurses Award 2010 are not applicable to employees covered by this Agreement.
- (3) PROVIDED FURTHER THAT during the life of this Agreement, the salary rates specified in this Agreement will be maintained at a level not less than the salaries prescribed in that Award.
- (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 Nursing and Midwifery Board of Australia 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.
- Provided that an Enrolled Nurse who qualifies as a registered nurse will commence RN employment at the RN Salary of Level 1 year 5.
- (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 within Level 1 on that person's first appointment following registration with the Nursing and Midwifery Board of Australia, 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 Nursing and Midwifery Board of Australia 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.

**15 SUPERANNUATION**

- (1) For the purpose of this clause and this Agreement the **nominated fund** means the Health Employees Superannuation Trust Australia or any successor.
- (2) Superannuation contributions for each eligible employee are to be made to a fund of the employee's choice as specified in writing by the employee. The contribution made by the employer must not be less than in accordance with and as specified in the *Superannuation Guarantee (Administration) Act 1992*.
- (3) In circumstances where eligible employees do not inform the employer of their choice of superannuation fund, as provided for in sub clause (2), the employer will remit the appropriate contributions for such employees to the nominated fund.
- (4) Employees may elect to make voluntary contributions to the nominated fund in accordance with the rules of that fund.
- (5) Superannuation contributions shall be made on a monthly basis as a minimum.

**16 SALARY PACKAGING AND SALARY SACRIFICE**

- (1) Employees' rates of pay specified in Schedule 1 of this Agreement may be packaged in accordance with the employer's salary packaging program and in accordance with the relevant legislation, and employees may elect, in writing, to convert a component of their annual gross salary to packaged benefits.
- (2) In respect of employees who have elected to enter into a salary packaging arrangement, any overtime and shift loadings must be calculated on the salary level which would have applied if the employee was not in the salary packaging scheme.

- (3) Non salary-packaged benefits must be paid for any period in respect of which the employee is paid salary, including but not limited to absence on worker's compensation or paid leave.
- (4) If an employee on a salary packaging arrangement goes on workers compensation the employee will receive not less than the entitlements which would have applied if the employee was not in the salary packaging scheme.
- (5) If an employee who has entered into a salary packaging arrangement ceases employment with the employer the salary packaging arrangement will cease on the date the employment ceases and –
  - (a) all entitlements due to the employee on termination will be paid at the employee's relevant rate;
  - (b) any outstanding fringe benefits tax or salary packaging benefit held by the employer, or the employer's salary packaging agent, on behalf of the employee, due to the employee will be paid less any necessary taxation deduction.
- (6) If an employee has entered into a salary packaging arrangement superannuation payments required under the *Superannuation Guarantee (Administration) Act 1992* must be calculated at the employee's relevant rate.
- (7) If an employee has entered into a salary packaging arrangement annual leave loading entitlements must be calculated at the employee's relevant rate.
- (8) Employees who have entered into a salary packaging agreements will be given the opportunity to review such agreements annually, and to amend or withdraw from such agreements.
- (9) The employer will advise each employee in writing –
  - (a) that an employee's participation in salary packaging is optional and entirely voluntary;
  - (b) of the employee's classification level and relevant rate;
  - (c) that the employee is encouraged to consult with a financial adviser before signing a salary packaging agreement;
  - (d) that the employee must be provided with a copy of any proposed salary packaging arrangement before deciding whether or not to elect to enter into it.
  - (e) of the right of the employee to inspect details of the payments and transactions made under the terms of any salary packaging arrangement and where such details are maintained electronically the employee must be provided with a print-out of the relevant information;
  - (f) that where at the end of the agreed period the full amount allocated to a specific benefit has not been expended the unused amount will not be carried forward to the next period;
  - (g) that where changes are proposed to all salary packaging arrangements, or salary packaging arrangements are to be cancelled by the employer for reasons other than legislative requirements then the employer must give two months notice;
  - (h) that in the event the employer ceases to attract exemption from payment of Fringe Benefits Tax, all salary packaging arrangements will be terminated and employees' wages will revert to their respective relevant rates as specified in this Agreement;

- (i) that all Agreement conditions other than salary packaging will continue to apply.
- (10) Salary packaging arrangements shall be entered into only in accordance with this Clause.
- (11) By agreement with the employer an employee may sacrifice an amount of salary, which would otherwise be payable in accordance with Schedule 1 of this Agreement, and have that sacrificed amount contributed to a complying superannuation fund of the employee's choice.
- (12) Where applicable the provisions of this Clause shall apply to salary sacrifice arrangements.
- (13) Salary increases under this Agreement shall be payable to employees covered by salary packaging arrangements and such increases are to be applied to employees' relevant rates.

## **17 NOTICE OF TERMINATION**

- (1) Except for misconduct justifying summary dismissal, an employee whose employment is terminated at the initiative of the employer shall be given notice of termination of employment, or payment in lieu of notice, by the employer 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
  - (i) No employee with more than one year's continuous service with the employer shall, without the consent of the employer, resign without having given fourteen days' notice of intention to do so. In the event that the employee does not give the required notice of termination of

employment then the employee may authorise the employer to deduct an amount equivalent to the period of notice not given from their final pay. (ii) No employee with one year of continuous service with the employer or less shall, without the consent of the employer, resign without having given seven days' notice of intention to do so. In the event that the employee does not give the required notice of termination of employment then the employee may authorise the employer to deduct an amount equivalent to the period of notice not given from their final pay.

- (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 and in such cases the wages shall be paid up to the time of dismissal only.

- (j) Serious misconduct includes:
  - (A) willful, or deliberate, behaviour by an employee that is inconsistent with the continuation of the contract of employment; and
  - (B) conduct that causes imminent, and serious, risk to:
    - (i) the health, or safety, of a person; or
    - (ii) the reputation, viability or profitability of the employer's business
- (k) Serious misconduct includes:
  - (A) the employee, in the course of the employee's employment, engaging in:
    - (i) theft; or
    - (ii) fraud; or
    - (iii) assault; or
  - (B) the employee being intoxicated at work; or
  - (C) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
- (l) Paragraph (k)(17.1(i)) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.
- (m) For this Clause, an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duty or with any duty that the employee may be called upon to perform.

## **(2) Discussions Prior To Decision To Terminate Employment**

Where disciplinary action may be necessary due to an employee's alleged misconduct or poor performance, 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. Depending on the seriousness of the misconduct or poor performance the employer may choose not to issue a first warning and to proceed directly to a final warning.

If the problem continues, or if there are other allegations of misconduct or poor performance, the employee will again be notified in writing of the matter and a response requested from the employee. If appropriate, a final warning in writing will be given to the employee and recorded on the employee's personnel file.



If the problem continues, or if there are other allegations of misconduct or poor performance, the employee may be terminated after the matters have been investigated and reasons sought from the employee.

Summary dismissal of an employee may still occur for acts of 'serious misconduct' (as defined in the Fair Work Regulations 2009 and above).

During all steps in the Disciplinary Procedure, the employee has the right to representation of his or her choice.

(3) **Records**

Except in the case of serious or wilful misconduct, an employee's personnel records relating to either disciplinary procedure, performance management or formal warning will be disregarded where the period of performance management/disciplinary procedure or warning has elapsed without further warning/s. If an employee has a performance management plan, disciplinary procedure or warning in place for a period greater than twelve months then that employee has the right to seek a review of the action in order to determine whether it should be withdrawn. During any such reviews the employee has the right to be represented by a person of the employee's choice.

**18 ALLOWANCES**

**(A) Higher Duties and In-Charge Allowance**

- (1) An employee 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 relevant rate prescribed for the higher position for all time so worked.
- (2) Subject to subclause (3) herein, 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 \$25.00 for each shift worked.

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

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] The allowance specified in subclause [2] above, will increase to \$30 for registered nurses at Level 1 or Level 2 who have completed a Team Leader course sourced and paid for by the employer.

**(B) Post Graduate Qualification Allowance**

- (1) A Registered, or Enrolled 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 relevant hourly rate of pay;
  - (b) for a post graduate diploma or a degree other than a nursing under graduate degree – 6.5% of the relevant hourly rate of pay;
  - (c) a masters or a doctorate – 7.5% of the relevant hourly 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.

- [d] Medication endorsement alone of an Enrolled Nurse is insufficient to qualify that nurse for a post graduate qualification allowance.
- (2) A post graduate qualification allowance paid in accordance with this subclause shall be taken into account in calculating overtime and annual leave payments.

**(C) Preceptor Allowance**

- (1) An Enrolled Nurse, a Registered Nurse Level 1 or a Registered Nurse Level 2 who acts as a preceptor shall be paid an allowance of \$2.00 per hour for all time spent so acting, subject to the following –
  - (a) completion of a preceptor program which is approved by the employer; and
  - (b) where an employer requires an employee to act as a preceptor the employer will pay all course fees and provide time off on full pay for the employee to attend the preceptor course. Paid time will also be provided for the purposes of annual credentialing.

Provided that the allowance specified herein shall increase to \$2.50 for any nurse who has completed a Train the Trainer qualification to be sourced and paid for by the employer.

**(D) Driving Licence Allowance**

- (1) An employee directed by the employer to drive vehicles requiring a driving licence is to be reimbursed the cost of the driving licence.

PROVIDED THAT this provision does not apply to employees who are required to drive only on an occasional basis.

**(E) Foul and Nauseous Linen Allowance**

- (1) This allowance is only payable where the employee is working in the area where there is a notifiable illness *and* they are handling foul and nauseous linen.
- (2) An allowance of 0.05% of the standard rate 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.
- (3) Any employee who is entitled to be paid an allowance will be paid a minimum sum of 0.27% of the standard rate for work performed in any week.

**(F) Meal Allowance When Required To Work Away From Usual Workplace**

Meal Allowance –

Where an employee is required to travel away from their usual place of employment, and are away during meal times and purchase a meal at any commercial outlet, then they will be paid a meal allowance as follows:

Breakfast	\$23.20
Lunch (or midday meal)	\$26.01
Dinner (or evening meal)	\$44.74

This allowance will be increased according to the dates stipulated in Clause 49 Salaries. The amount of the increase will be the annual percentage wage rise of the agreement.

**(G) Charges For Meal Provided By Employer**

The maximum amount that shall be charged or deducted where employees receive a meal from their employer shall be as per Schedule 2.

PROVIDED THAT where a meal is provided as above, no extra charge applies for beverages (i.e. tea or coffee), toast, bread, butter or condiments.

**(H) 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 overtime, at the relevant rate, as follows:
  - (a) for the first recall a minimum payment of four hours; and
  - (b) for any subsequent recall a minimum payment of three hours.
- (2) Time reasonably spent in getting to and from work is to be regarded as time worked.
- (3) Employees recalled to work within two hours of their normal starting time shall be paid at overtime rates with a minimum payment of two hours at double time.

**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. Such an arrangement will only be used in extenuating circumstances and is not intended to replace the normal rostering of shifts where employees are available to work those shifts.
- (5) An employee may be required by the employer to remain on close call. Provided that an employee may not be required to work more than one close call per week unless the employee agrees otherwise. Notwithstanding this, close call arrangements and the rostering of normal shifts will be subject to fatigue management and rostering guidelines established for this purpose by the employer and reviewed by the parties covered by the agreement each six months.
- (6) The span of a close call period will be no longer than 8 hours.
- (7) Employees will be provided with a separate room with a bed, use of appropriate facilities and free board and lodging for each close call period.
- (8) If an employee required to remain on close call is not required to begin work, he or she will be paid a minimum payment equivalent to eight hours at the employee's relevant rate.
- (9) If an employee is rostered to work immediately before or after a close call period, all work performed during the close call period will be paid in accordance with the appropriate overtime rate, provided that such payment will be at least equivalent to the minimum payment specified in (1) above.
- (10) If an employee is not rostered to work immediately before or after a close call period and is required to begin work during the close call period:
  - (a) the employee will be paid a minimum payment equivalent to ten hours at the employee's relevant rate; and
  - (b) if, after the first two hours of the close call period, the employee works for any period that is longer than one hour, that period of work will be paid at the appropriate overtime rate.

**Remote Call**

- (11) For the purpose of this Clause **remote call** means an employee rostered to be available for call but allowed to leave the workplace.
- (12) An employee rostered to remain on remote call is to be paid \$1.71 for each hour that the employee is required to be so available, with a maximum payment of \$17.47 per day or shift when so rostered.

- (13) 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 (12) above.

**(I) Uniforms**

- (a) Employees, other than Executive Staff, shall be provided free of cost, by the employer, suitable and serviceable uniforms as detailed in clause (I)(b) of this Clause.
- (b) The Employer will supply on appointment, to all employees under this Agreement, an approved Medea Park uniform, incorporating the official logo, of two tops and one bottom. Yearly thereafter in October, to all employees under this Agreement, an approved Medea Park uniform, incorporating the official logo, of two pieces, usually one top and one bottom.

Replacement of uniforms will be annually or through normal 'wear and tear'.

- (c) An employee, on leaving the service of the employer, shall return any uniform or part thereof provided by that employer immediately prior to leaving.
- (d) Employees shall be responsible for the laundering of their uniforms.

**(J) Meal Allowance When Required To Work Overtime**

An employee required to work for more than two hours without being notified the previous day or earlier of the requirement to work overtime shall be supplied with a meal by the employer.

**(K) 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 casual 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.

**19 PAYMENT OF WAGES**

- (1) For the purpose of this Clause **wages** means the relevant rate for ordinary working hours worked to which an employee is entitled and includes any other payment to which an employee is entitled under the provisions of this Agreement including allowances, loadings and overtime.

**Time And Interval Of Payment**

- (2) Wages are to be paid fortnightly during working hours and not later than Thursday.
- (3) When a pay day falls on a public holiday wages shall be paid on the last working day before the public holiday.
- (4) The pay day shall not be varied, except after consultation with employees and an agreed phasing-in period.

**Method Of Payment Of Wages**

- (5) Payment of wages shall be by direct bank deposit or some other method determined by the employer, provided that employees shall nominate into which bank or financial institution their wages are to be paid.
- (6) The method of payment shall not be varied, except after consultation with employees and an agreed phasing-in period.

### **Statement Of Wages**

- (7) On the pay day the employer is to provide to employees full written details of the wages being paid in that pay period.

### **Deduction Of Moneys**

- (8) Where authorised by an employee in writing, the employer is to make deductions from the employee's wages in respect of medical benefits, union subscriptions, and deductions in respect of superannuation and salary packaging.
- (9) Where on termination of employment an employee owes money to the employer, including the cost of unreturned uniforms and other property of the employer, the employer is entitled to deduct such owed money from the employee's final pay as authorised by the employee.

For the purpose of clarity **owed money** is taken to include unrecovered overpaid wages.

### **Late Payment Of Wages**

- (10) Except in circumstances beyond the control of the employer, and subject to sub-clause (12) below, an employee kept waiting for more than a quarter of an hour for wages, on the normal pay day after the usual time for ceasing work, is to be paid the appropriate overtime rate after that quarter of an hour, with a minimum payment for a quarter of an hour, and payment shall continue on that day until the employee is advised that payment will not be forthcoming on that day.
- (11) Payment at the appropriate overtime rate shall continue during all ordinary hours of work on each succeeding day or days, including rostered days off, up to a maximum of 7.6 hours per day, until such time as payment is made.

### **Agreed Alternative Arrangements - No Waiting Time Payment To Apply**

- (12) The provisions for payment of waiting time of sub-clauses (10) and (11) above shall have no effect in circumstances whereby payment cannot be effected on pay day but the employer and employee agree to an alternative arrangement for payment to be made.

PROVIDED THAT if the employer fails to make payment of the employee's wages in accordance with an alternative arrangement provided for under this sub clause, the employee shall be deemed to have been kept waiting for payment since the usual pay day and shall be entitled to payment of waiting time in accordance with the provisions of sub-clauses (10) and (11) above until such time as the employee's wages are paid.

### **Payment Of Wages On Termination**

- (13) Where employment is terminated summarily or on giving the prescribed notice all wages owing shall, where practicable, be paid on the day of termination.
- (14) If payment at the time of termination is not practicable the employer shall, on the next working day of the pay office arrange for all of the employee's outstanding pay and entitlements to be paid into the employee's nominated bank or other financial institution account.
- (15) Except in circumstances beyond the employer's control, if an employee's outstanding pay and entitlements upon termination are not paid within the time specified in sub-clause (14) above, any time spent waiting to be paid after the date of termination shall be paid for at the relevant hourly rate up to a maximum of 7.6

hours a day for each day that the employee is kept waiting for payment and shall continue until the time that payment is made.

## **20 MEAL BREAKS**

### **Meal Times – Day Workers**

- (1) The minimum time allowed for meals shall be half an hour.
- (2) Day work employees who work in excess of five (5) hours on any day shall be entitled to a paid meal break of 30 minutes duration.

The duration of the meal break may be altered by written agreement between the Employer and an individual employee.

### **Rest Breaks**

- (3) Employees shall be entitled to two separate paid 10 minute rest break (in addition to the paid meal break) during each ordinary shift of 7.6 hours or more.
- (4) Subject to mutual agreement, such rest breaks may alternatively be taken as one 20 minute rest break.
- (5) Where less than 7.6 ordinary hours are worked, employees will be allowed one paid 10 minute rest break in each four hour period worked.

### **Work During Meal Break**

- (6) Subject to existing custom and practice day workers who are directed to work during their usual meal break or who are not relieved shall, for all work performed during such period and until a meal break is allowed or until relieved, be paid at the rate of time and one half of their relevant rate.
- (7) 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.

### **Meal Break When Required To Work Overtime**

- (8) 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 relevant rate.

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.

## **21 OVERTIME – DAY WORKERS**

### **Requirement To Work Reasonable Overtime**

- (1) Subject to sub-clause (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 – Day Workers**

- (4) For all time worked in excess of ordinary hours of work, payment, except for shift workers is to be made as follows –
- (a) Monday to Saturday inclusive – time and a half for the first two hours and double time thereafter;
  - (b) Sunday – double time;
  - (c) Public holidays – double time and one half.

PROVIDED THAT an employee 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 relevant rate for the first eight hours 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 relevant rate.

**Part-Time Employees - Work Performed Outside Spread Of Hours**

- (5) Part-time day workers who work outside the specified spread of hours are to be paid as follows –
- (a) Monday to Saturday inclusive – time and one half for the first two hours, double time thereafter;
  - (b) Sunday – double time;
  - (c) Public holidays – double time and a half.

**Calculation Of Overtime To Be Based On Agreement Rates**

- (7) For employees receiving a twenty five per cent 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**

- (8) By agreement between the employer and an employee, time off in lieu of overtime may be taken at the equivalent overtime rate.

PROVIDED THAT such an agreement, may be discontinued at the request of either the employer or the employee.

- (9) 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.

**22 SHIFT WORKERS**

**Afternoon And Night Shift Allowances**

- (1) Shift workers are to be paid the following loading on their relevant hourly rate for working afternoon or night shifts –
- (a) afternoon shift – 15.0%;
  - (b) night shift – 17.5%.

- (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 relevant rate for all time worked during ordinary working hours.

#### **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 sub-clause (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 double time of the relevant hourly rate;
- (b) Public holidays – at the rate of double time and a half 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.

#### **Broken Or Split Shifts**

- (8) Broken shifts may be worked by agreement between the employer and the employee(s) concerned.

PROVIDED THAT work performed outside the spread of ordinary working hours on a broken shift is to be paid at double time.

#### **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 eight hours per day shall be paid at double time.

- (10) Where an employee is directed to work shifts other than in accordance with this Clause the employee shall be entitled to overtime payments as specified by this Clause.

**Rosters**

- (11) 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 twenty-eight day roster period which is to include an accrued day off in addition to eight rostered days off; and

**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 four weeks notice.

PROVIDED THAT by agreement between the employer and the employee(s) concerned changes to rosters may occur without the four weeks notice specified in (c) above.

PROVIDED FURTHER that an 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.

**Relief Employees**

- (12) Employees required to provide relief on accrued days off are to be regarded as shift workers for all purposes of this Agreement except for an entitlement to additional annual leave.

**Relief Employees Meal Break**

- (13) Shiftwork employees who work in excess of five (5) hours on any day shall receive a paid meal break of 30 minutes. The meal break counts as time worked.

If a shiftworker on a paid meal break is interrupted during the meal break by a call to duty, the employee will 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 will be emergency situations or other circumstances where the work required cannot wait until after the meal break has been completed.

**Rest Breaks**

- (14) Employees shall be entitled to two separate paid 10 minute rest break (in addition to the paid meal break) during each ordinary shift of 7.6 hours or more.
- (15) Subject to mutual agreement, such rest breaks may alternatively be taken as one 20 minute rest break.
- (16) Where less than 7.6 ordinary hours are worked, employees will be allowed one paid 10 minute rest break in each four hour period worked.

#### **Handover**

- (17) A maximum of 15 minutes per shift will be paid to the Authorised Nurse in charge of handover for each shift (Morning, Afternoon and Night) which equates to a total of 45 minutes in a 24 hour period.
- (18) Handover time is to be paid at the base rate of pay.

#### **Overtime**

##### **Payment For Overtime**

- (19) For work performed by shift workers outside the ordinary hours of their shifts, double time is to be paid, provided a minimum of eight ordinary hours has been worked on that day.

PROVIDED THAT this payment shall not apply in circumstances where arrangements approved by the employer have been made between the employees themselves, or due to rotation of shifts.

- (20) In circumstances where the employer is given less than four hours notice that an employee rostered to relieve an afternoon or night shift worker will not attend to do so at the designated time, the unrelieved worker is to be paid at the rate of time and one half for the additional time worked until four hours has elapsed from the time notice was given to the employer.

PROVIDED THAT for all time worked in excess of that four-hour period the unrelieved shift worker is to be paid at the rate of double time.

PROVIDED FURTHER that in all other circumstances an unrelieved shift worker is to be paid at the rate of double time until relieved.

##### **Rest Period After Overtime**

- (21) 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.
- (22) 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.
- (23) If at the direction of the employer an employee resumes or continues work without having had eight consecutive hours off duty as specified in sub clause (22) 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.

##### **Calculation Of Overtime**

- (24) An employee paid a loading in lieu of personal leave, annual leave and public holidays who works overtime is to be paid at double the relevant hourly rate for any overtime so worked.

## **23 ANNUAL LEAVE**

### **Period of Leave**

#### **Day Workers**

- (1) For each year of service a full time employee is entitled to four weeks (152 hours) of paid annual leave.

Annual leave accrues progressively during the year and is based on employee's ordinary hours of work and accumulates from year to year.

#### **Shift Workers**

- (2) Shift workers who work at least twenty (20) Saturdays or Sundays or any combination of Saturdays and Sundays totalling twenty (20) in any one leave year shall be allowed, in addition to the 152 hours prescribed in sub clause (1) above, an extra thirty-eight hours annual leave, to be taken in a period of seven consecutive days including non-working days.

PROVIDED THAT if an employee with twelve months' continuous service is engaged for part of that period as a shift worker, the employee's entitlement to annual leave, in addition to the 152 hours prescribed in sub clause (1) above, is to be increased by 3.8 hours for each month the employee has been continuously engaged as a shift worker.

#### **Annual Leave Exclusive Of Public Holidays**

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

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.

- (5) 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.

#### **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.

#### **Time Of Taking Leave**

- (7) Paid annual leave may be taken for a period agreed between an employee and his or her employer.
- (8) The employer must not unreasonably refuse to agree to a request by the employee to take annual leave.

- (9) **Excessive Annual Leave Accruals**

- (a) Definitions

An employee has an excessive leave accrual if:

- (i) The employee is not a shiftworker and has accrued more than eight weeks' paid annual leave; or
- (ii) The employee is a shiftworker and has accrued more than 10 weeks' paid annual leave.

(b) Eliminating excessive leave accruals

- (i) Dealing with excessive leave accruals by agreement

Before an employer can direct that leave be taken under subparagraph (ii) or an employee can give notice of leave to be granted under subparagraph (vi), the employer or employee must seek to confer with the other and must genuinely attempt to agree upon steps that will be taken to reduce or eliminate the employee's excessive leave accrual.

- (ii) The employer may give a written direction to the employee to take a period or periods of paid annual leave if:

- (A) The direction states that it is a direction given under clause 23(9)(b)(ii) of this Agreement; and
- (B) The employee has excessive leave accrual; and
- (C) Agreement has been attempted pursuant to subclause (b)(i); and
- (D) The direction does not result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks (taking into account all other paid annual leave that has been agreed, that the employee has been directed to take or that the employee has give notice of under subparagraph (vi) below; and
- (E) The direction does not require the employee to take any period of leave less than one week; and
- (F) The direction does not require the employee to take any period of leave commencing less than eight weeks after the day the direction is given to the employee; and
- (G) The direction does not require the employee to take any period of leave commencing more than 12 months after the day the direction is given to the employee; and
- (H) The direction is not inconsistent with any leave arrangement agreed between the employer and employee.

- (iii) An employee to whom a direction has been given under subparagraph (ii) above may make a request to take paid annual leave as if the direction had not been given.

- (iv) If leave is agreed after a direction is issued and the direction would then result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks, the direction will be deemed to have been withdrawn.

- (v) The employee must take paid annual leave in accordance with a direction complying with subparagraph (ii) above.

- (vi) If an employee has had an excessive leave accrual for more than six months, the employer has not given a direction under subparagraph (ii) above that will eliminate the employee's excessive leave accrual, and agreement is not reached under subparagraph (i) above, the employee may give a written notice to the employer that the employee wishes to take a period or periods of paid annual leave if:

- (A) The notice states that it is a notice given under clause 23(9)(b)(vi) of this Agreement; and
- (B) The notice does not result in the employee's remaining accrued entitlement to paid annual leave at any time being less than six weeks (taking into account all other paid annual leave that has

- been agreed, that the employee has been directed to take under subparagraph (ii) above or that the employee has given notice of under this subclause);
- (C) The notice does not provide for the employee to take any period of leave of less than one week; and
  - (D) The notice does not provide for the employee to take any period of leave commencing less than eight weeks after the day the notice is given to the employer; and
  - (E) The notice does not provide for the employee to take any period of leave commencing more than 12 months after the day the notice is given to the employer; and
  - (F) The notice is not inconsistent with any leave arrangement agreed between the employer and employee.
- (vii) The employer must grant the employee paid annual leave in accordance with a notice complying with subparagraph (vi) above.
  - (viii) Without limiting the dispute resolution clause of this Agreement, an employer or an employee may refer the following matters to the Fair Work Commission under the dispute resolution clause:
    - (A) a dispute about whether the employer or employee has requested a meeting and genuinely tried to reach agreement under subparagraph (i);
    - (B) a dispute about whether the employer has unreasonably refused to agree to a request by the employee to take paid annual leave; and
    - (C) a dispute about whether a direction to take leave complies with subparagraph (ii) or whether a notice requiring leave to be granted complies with subparagraph (vi).
- (9) Cashing out of Annual Leave
- Cashing out of paid annual leave is allowed provided:
- (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 four weeks;
  - (b) Each cashing out of a particular amount of paid annual leave must be by separate agreement in writing between the employer and employee; and
  - (c) The employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has foregone.
- (10) Payment for Period of Leave
- (i) An employee, before going on annual leave or additional leave provided for in subclause (b) above will be paid the amount of ordinary time wages they would have received had they not been on leave.
  - (ii) Payment will be made either in advance on request (at the next schedule pay date) or in the normal pay cycle if that's the option of the employee.

#### **Proportionate Leave On Termination Of Employment**

- (11) If an employee's employment comes to an end in accordance with the provisions of this Agreement, the employee is to be paid pro rata annual leave at the relevant rate as follows –

**Day Workers**

- (a) for employees engaged as day workers – 12.67 hours for each completed month of continuous service;

**Shift Workers**

- (b) for employees engaged as shift workers – 15.83 hours for each completed month of continuous service in addition to entitlements specified under the provisions of sub clause (4) above;

**Part-time Employees**

- (c) for part-time employees engaged as day workers – 7.7% of the ordinary hours worked in each complete month of continuous service;
- (d) for part-time employees engaged as shift workers – 9.6% of the ordinary hours worked in each completed month of continuous service in addition to entitlements specified under the provisions of sub clause (5) above.

**Annual Leave Loading**

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

**Day Worker**

- (a) an employee who, if not taking annual leave would otherwise have worked on day work only, a loading of 17.5% of the amount that the employee would have been in receipt of if they had not been on leave;

**Shift Worker**

- (b) an employee who, if not taking annual leave would otherwise have worked on shift work only, a loading of 17.5% of the amount that the employee would have been in receipt of if they had not been on leave.

PROVIDED THAT an employee who would have received shift payments as specified in Clause 22 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 relevant rate, then the employee's annual leave loading is to be calculated as an amount equivalent to the shift payments the employee would have received in accordance with the employee's projected shift roster.

**Calculation Of Continuous Service**

- (13) For the purpose of this clause, service shall be deemed to be continuous notwithstanding any absence from work on account of personal sickness or accident.

**Annual Leave Allowed In Advance**

- (14) An employer may allow an employee to take annual leave before the employee has completed twelve months continuous service but in such circumstances a further period of annual leave does not begin to accrue until the employee has completed the period of twelve months continuous service relating to which the leave in advance was granted.

PROVIDED THAT where leave in advance has been granted to an employee, and the employee's employment ends before the completion of the period of twelve months continuous service relating to which the leave in advance was granted, the employer may, for each month of the period of twelve months continuous service

not completed by the employee, deduct from whatever remuneration is payable to the employee upon termination of the employment one twelfth of the amount of annual leave granted in advance, which amount is not to include any sums paid for any of the public holidays prescribed by Clause 26.

#### **Annual Leave Exclusive Of Other Periods of Leave**

- (15) If the period during which an employee takes paid annual leave includes a period of personal leave, carer's leave, compassionate leave, bereavement leave or community service leave, the employee will be given credit for the period of that other leave and the paid annual leave is to be extended by the number of days that the employee was on personal leave, carer's leave, compassionate leave or bereavement leave.

#### **24 PERSONAL/CARER'S**

Personal/carers leave and compassionate leave are a matter provided for in the NES (Division 7 – Personal/carers leave and compassionate Leave). 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.

For the purposes of this Clause the following definitions will apply:

##### **Immediate family means:**

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

**Spouse** includes a former spouse.

##### **De facto partner:**

- (a) means a person who, although not legally married to the employee, lives with the employee on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- (b) includes a former de facto partner of the employee.

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

- (1) Full time and part-time employees are entitled to paid personal/carers leave in accordance with this Clause. Casual employees are entitled to unpaid carer's leave in accordance with subclause [8] of this Clause.

##### **Purpose Of Personal/Carer's Leave**

- (2) Employees other than casual employees are entitled to paid personal/carers leave for absences from work due to –
- (a) personal illness or injury (personal leave); or
  - (b) to provide care or support (carer's leave) to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because of:
    - a personal illness, or injury, affecting the member; or
    - an unexpected emergency affecting the member.

##### **Amount Of Personal/Carer's Leave – Full Time Employees**

- (3) For each year of service with the employer, an employee is entitled to 20 days (152 hours) of paid personal/carers leave.

An employee's entitlement to personal/carers leave accrues progressively during a year of service according to the employee's ordinary hours of work and accumulates from year to year.

### **Personal leave**

- (4) 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 relevant rate exclusive of shift or weekend loadings or overtime subject to the following –
- (a) employees are not entitled to paid personal leave for any period of absence in respect of which they are entitled to workers' compensation;
  - (b) employees must as soon as practicable (which may be a time after the leave has started), 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;
  - (c) employees must provide evidence that would satisfy a reasonable person that they were unable because of illness or injury to attend for duty on the day or days for which personal leave is claimed;
  - (d) untaken personal leave accumulates from year to year without limitation.
  - (e) If an employee is absent on personal leave on the day immediately before or after an accrued day off, or if the employee takes personal leave during a period of annual leave, the employee must provide a medical certificate in support in respect of the absence.

### **Carer's Leave**

- (5) Carer's leave is paid at the employee's relevant rate exclusive of shift or weekend loadings or overtime subject to the following:

#### **Evidence**

- (6) If required by the employer, employees are to provide a medical certificate or some other form of evidence that would satisfy a reasonable person that the leave is taken for a reason specified in subclause (2)(b) above.

### **Notifying The Employer Of Absence On Carer's Leave**

- (7) (a) An employee must give to his or her employer notice of the taking of leave under this Clause by the employee.
- (b) (i) The notice must be given to the employer as soon as reasonably practicable, which may be a time after the leave has started; and  
(ii) include an estimate of the period, or expected period, of leave to be taken.

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

- (8) An employee, including a casual employee, is entitled to 2 days of unpaid carer's leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of:

- (a) a personal illness, or personal injury, affecting the member; or
- (b) an unexpected emergency affecting the member.

### **Part-time Employees**

- (9) A part-time employee is entitled to take accrued personal leave. Personal leave accumulates from year to year at the accrual rate described below.
- (10) Part-time employees are entitled to personal/carers' leave on the same basis as full-time employees except that they will accrue personal leave as follows –
- (a) for employees whose ordinary hours of work are twenty or more but fewer than thirty per week – 114 hours per year;
  - (b) for employees whose ordinary hours of work are thirty or more – 152 hours per year.



PROVIDED THAT in determining the amount of leave part time employees accrue the average hours worked per week in the preceding three months shall be used, except that where employees have less than three months' service, the ordinary hours per week for which they were engaged shall be used.

## **25 COMPASSIONATE LEAVE**

- (a) An employee is entitled to 2 days of compassionate leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household:
  - (i) contracts or develops a personal illness that poses a serious threat to his or her life; or
  - (ii) sustains a personal injury that poses a serious threat to his or her life.
- (b) An employee may take compassionate leave for a particular permissible occasion if the leave is taken 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 paragraph (a).
- (c) An employee may take compassionate leave for a particular permissible occasion as:
  - (i) a single continuous 2 day period; or
  - (ii) 2 separate periods of 1 day each; or
  - (iii) any separate periods to which the employee and his or her employer agree.
- (d) The employee may take the compassionate leave for a permissible occasion at any time while the illness or injury persists.
- (e) An employee must give his or her employer notice of the taking of leave under this subclause by the employee.
- (f) 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.
- (g) An employee who has given his or her employer notice of the taking of leave under this subclause must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a permissible occasion in circumstances specified in paragraph (a).
- (h) If, in accordance with this subclause, 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.

## **26 BEREAVEMENT LEAVE**

- (a) An employee is entitled to 3 days of bereavement leave for each occasion (a permissible occasion) when a member of the employee's immediate family, or a member of the employee's household, dies.
- (b) The employer has the discretion to grant bereavement leave in addition to an employee's entitlement under paragraph (a).
- (c) An employee may take bereavement leave for a particular permissible occasion if the leave is taken after the death of the member of the employee's immediate family or household referred to in paragraph (a).

- (d) An employee may take compassionate leave for a particular permissible occasion as:
  - (i) a single continuous 3 day period; or
  - (ii) 3 separate periods of 1 day each; or
  - (iii) any separate periods to which the employee and their employer agree.
- (e) An employee must give his or her employer notice of the taking of leave under this subclause by the employee.
- (f) 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.
- (g) An employee who has given his or her employer notice of the taking of leave under this subclause must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a permissible occasion in circumstances specified in paragraph (a).
- (h) If, in accordance with this subclause, an employee, other than a casual employee, takes a period of bereavement 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.
- (13) Other compassionate/bereavement leave
  - (a) The employer may allow a full time or part time employee to take paid compassionate or bereavement leave if a person who is not a member of the employee's immediate family or household contracts or develops a personal illness, or sustains a personal injury, which poses a serious threat to his or her life, or dies, where the employee can establish that a significant relationship exists.
  - (b) An employee may take unpaid compassionate and/or bereavement leave by agreement with the employer.

## **27 PARENTAL LEAVE**

- (1) An employee's entitlement to parental leave is in accordance with Division 5 – Parental leave and related entitlements, Subdivision B – Parental Leave of the National Employment Standards.
- (2) In addition to the entitlements available under sub-clause (1) herein, an eligible female employee is entitled to be paid fourteen weeks maternity leave at the relevant rate. Upon request the female employee may elect to be paid maternity leave of twenty-eight weeks at half-pay instead of fourteen weeks at full pay at the relevant rate.

and further –

an eligible male employee or non-birth partner is entitled to one week's paid paternity leave at the relevant rate.

## **28 CEREMONIAL LEAVE**

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

- (b) An employee taking leave for ceremonial purposes may opt to take annual leave instead of leave without pay.
- (c) In normal circumstances, an employee seeking to take leave under this provision, must lodge their application with supporting evidence at least 28 working days in advance stating the period of leave to be take.

## **29 COMMUNITY SERVICE LEAVE**

Community service leave is provided for in the National Employment Standards.

## **30 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 addition to or in lieu of any of these public holidays.
- (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) Subject to the provisions of this clause and clause 23, where an employee is entitled to payment for public holidays this may occur, by agreement between the employer and employee, in the following manner –
  - (a) if a public holiday is worked the employee can be paid at the rate of double time and a half, in which case no extra day will be added to the employee's annual leave entitlement; or
  - (b) if an entitlement to payment for public holidays not worked exists the employee can be paid at the rate of single time, in which case no extra day will be added to the employee's annual leave entitlement.

## **31 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.

### 32 NOTICE BOARD

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

### 33 CONSULTATION

- (a) Where an employer is considering a decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be affected by the proposed changes and their representatives, if any.
- (b) As soon as practicable the employer must discuss with the employees affected and their representatives, if any, the introduction of the changes referred to in sub-clause (a), the effects the changes are likely to have on employees and measures the employer is taking to avert or mitigate the adverse effects of such changes on employees.
- (c) For the purposes of the discussion the employer will provide to the employees, and their representatives, if any, in writing:
  - (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 employee(s); and
  - (iii) any other matters likely to affect the employee(s).
- (d) The employer shall give prompt and genuine consideration to matters raised about the major change by the relevant employee(s).
- (e) For the purpose of this clause, **significant effects** include:
  - the termination of the employment of an employee(s); or
  - major change to the composition, operation or size of the employer's workforce or to the skills required of employee(s); 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 employee(s); or
  - the need to relocate employee(s) to another workplace; or
  - the restructuring of jobs; or
  - changes to the legal or operational structure of the employer or business.

Provided that where this Agreement makes provision for alteration of any of these matters such alteration is deemed not to have significant effect.

- (f) Consultation about changes to rosters or hours of work
  - (i) Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.
  - (ii) The employer must:
    - (A) provide to the employee or employees affected and their representatives, if any, information about the proposed change (for example, information about the nature of the change to the

employee's regular roster or ordinary hours of work and when that change is proposed to commence);

- (B) invite the employee or employees affected and their representatives, if any, to give their views about the impact of the proposed change (including any impact in relation to their family or caring responsibilities); and
- (C) give prompt and genuine consideration to any views about the impact of the proposed change that are given by the employee or employees concerned and/or their representatives.

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

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

## **34 REDUNDANCY**

### **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 –

<b>Employee's period of continuous service</b>
Not more than 3 years
More than 3 years but not more than 5 years

<b>Period of Notice</b>
At least 2 weeks
At least 3 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 union(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; and
- (c) payment for all accrued annual leave including leave loading.

### **Involuntary Redundancies**

- (d) notice as specified in this Clause, or payment in lieu of that notice; and
- (e) two weeks pay for each completed year of service and pro rata for an uncompleted year, or payment in accordance with the National Employment Standards, whichever is greater; and
- (f) payment for all accrued annual leave including leave loading; and
- (g) 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.

- (h) 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 relevant rate, and 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 Counseling**

- (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.

## **35 GRIEVANCE AND DISPUTE RESOLUTION**

- (1) In the event of a dispute in relation to a matter arising under this Agreement, or a dispute in relation to the National Employment Standards, in the first instance the parties will attempt to resolve the matter at the workplace by discussion between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.
- (2) Employees are allowed to be represented for the purposes of dispute resolution. A party to the dispute may appoint another person, organisation or association to accompany or represent them in relation to the dispute.
- (3) 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 Fair Work Commission (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.

- (4) Alternatively, by agreement between the employee(s) and employer, the matter may be brought before an accredited Alternate Dispute Resolution (ADR) practitioner, in which case the parties will agree to be bound by the ADR practitioner's decision. The costs of the ADR practitioner will be borne by the employer.
- (5) It is a term of this Agreement that while the dispute resolution procedure is being conducted work shall continue normally unless an employee has a reasonable concern about an imminent risk to his or her health or safety.
- (6) Any dispute referred to the FWC under this clause should be dealt with by a member agreed to by the parties at the time or, in default of agreement, a member nominated by the President.
- (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.

### **36 POLICE CHECKS**

As an employment requirement of the Aged Care Act 1997 as amended, all employees are required to furnish a satisfactory National Police Check. The employer will meet the ongoing costs for the employee of subsequent to employment Police Checks.

### **37 LONG SERVICE LEAVE**

Long Service Leave entitlements shall be in accordance with the Long Service Leave Act 1976, with the exception that employees shall be able to access accrued leave after 10 years of service rather than after 15 years. This means an employee will be entitled to access leave or payment for 8.6666 weeks after 10 years of service.

### **38 PROFESSIONAL DEVELOPMENT**

All parties to this Agreement will actively encourage and facilitate professional development, particularly in relation to supporting RNs & ENs maintaining registration with the Nursing and Midwifery Board of Australia.

### **39 TELEPHONE EXPENSES**

An employee in Community Care who uses their own mobile phone for authorised purposes shall be reimbursed the cost of any such calls or text messages.

### **40 NO EXTRA CLAIMS**

The parties agree that they will not pursue any extra claims relating to salaries or changes to conditions of employment as dealt within this Agreement or as per the negotiating agenda of each party during the negotiation process leading up to the agreement.

### **41 NO PRECEDENT**

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

### **42 INDIVIDUAL FLEXIBILITY AGREEMENT**

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

- (a) the agreement deals with 1 or more of the following matters:
  - (i) arrangements about when work is performed;
  - (ii) overtime rates;



- (iii)penalty rates;
  - (iv)allowances;
  - (v)leave loading; and
  - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
  - (c) the arrangement is genuinely agreed to by the employer and employee.
1. The employer must ensure that the terms of the individual flexibility arrangement:
    - (a) are about permitted matters under section 172 of the Fair Work Act 2009; and
    - (b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
    - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
  2. The employer must ensure that the individual flexibility arrangement:
    - (a) is in writing; and
    - (b)includes the name of the employer and employee; and
    - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
    - (d) includes details of:
      - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
      - (ii)how the arrangement will vary the effect of the terms; and
      - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
    - (e) states the day on which the arrangement commences.
  3. The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
  4. The employer or employee may terminate the individual flexibility arrangement:
    - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
    - (b) if the employer and employee agree in writing — at any time.
  5. The employer notifies the Employee in writing that they may seek advice from their union representative, accountant, or other party before entering into an individual flexibility agreement.

## SIGNATORIES

FOR MEDEA PARK ASSOCIATION INCORPORATED:

This agreement is signed by Deborah Austen in her capacity as the Chief Executive Officer of Medea Park Association Incorporated.

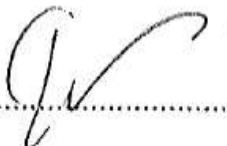
Ms Austen work address is:

17 Circassian Street  
ST HELENS TAS 7216

As the Chief Executive Officer of Medea Park Association Incorporated, Ms Austen has the authority to sign the Agreement on behalf of the employer.

Deborah Austen  
Chief Executive Officer  
Medea Park Association Incorporated

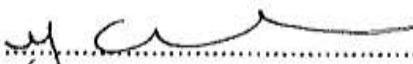
Signature

  
.....

Date

9<sup>th</sup> March, 2021  
.....

Witnessed by (signature)

  
.....

Witness name in full

Yvette Castles  
.....

Witness address

158 Ansons Bay Road  
St Helens 7216.  
.....

FOR AUSTRALIAN NURSING AND MIDWIFERY FEDERATION, Tasmanian Branch

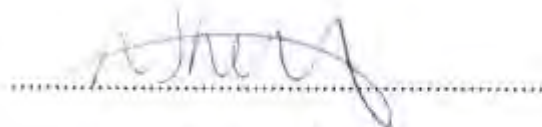
This agreement is signed by E Shepherd in her capacity as the Branch Secretary of the Australian Nursing and Midwifery Federation, Tasmanian Branch.

Ms Shepherd's work address is: 182 Macquarie Street, Hobart, Tasmania, 7000

As the Branch Secretary of the Australian Nursing and Midwifery Federation, Ms Shepherd has the authority to sign the Agreement on behalf of employees who are members of the Australian Nursing and Midwifery Federation, Tasmanian Branch and are employed pursuant to this Agreement.

Emily Shepherd, Branch Secretary, Australian Nursing and Midwifery Federation, Tasmanian Branch

Signature



Date

10 March 2021

Witnessed by (signature)



Witness name in full

Simone Nicole Reid

Witness address

19 Brisbane Street

Lanreoson Tasmania

7250.

FOR THE HEALTH AND COMMUNITY SERVICES UNION (Tasmania):

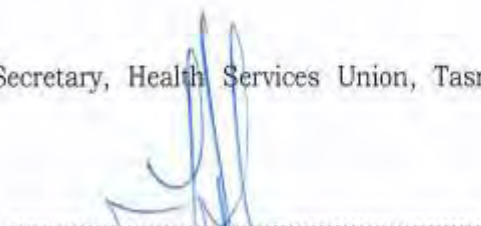
This agreement is signed by T Jacobson in his capacity as the State Secretary of the Health Services Union, Tasmania Branch.

Mr Jacobson's work address is : 11 Clare Street, New Town, Tasmania, 7008

As the State Secretary of the Health and Community Services Union, Tasmania Branch, Mr Jacobson has the authority to sign the Agreement on behalf of employees who are members of the Health Services Union and are employed pursuant to this Agreement.

Mr Timothy Jacobson, State Secretary, Health Services Union, Tasmania Branch

Signature



Date

12/03/21

Witnessed by (signature)



Witness name in full

JAMES EDDINGTON

Witness address

11 CLARE ST NEW TOWN  
TAS 7008

## **SCHEDULE 1 - SALARIES**

2.50%

### **ENROLLED NURSE**

1st Year of Service	55,919
2nd Year of Service	57,105
3rd Year of Service	58,289
4th Year of Service	59,474
5th Year of Service	60,658

### **ENROLLED NURSE - Level 2**

1st Year of Service	61,561
2nd Year of Service	62,749

### **REGISTERED NURSE - Level 1**

1st Year of Service	61,251
2nd Year of Service	64,214
3rd Year of Service	67,176
4th Year of Service	70,138
5th Year of Service	73,100
6th Year of Service	76,063
7th Year of Service	79,025
8th Year of Service	81,987

### **REGISTERED NURSE - Level 2**

1st Year of Service	84,949
2nd Year of Service	86,924
3rd Year of Service	88,898
4th Year of Service	90,874

### **REGISTERED NURSE - Level 3**

1st Year of Service	94,579
2nd Year of Service	96,799
3rd Year of Service	99,020
4th Year of Service	101,243

### **REGISTERED NURSE - Level 4**

Grade 1 (0-60 beds)	113,092
Grade 2 (61-90 beds)	113,092
Grade 3 (91-120 beds)	113,092
Grade 4 (121 & above beds)	121,733

## SCHEDULE 2 - ALLOWANCES

Clause			
18[F]	Meal Allowance working away from home		
	Bfast		\$23.20
	Lunch		\$26.01
	Dinner		\$44.74
18[G]	Charges for Meals		
	2/3 course		\$6.07
	single		\$4.66
	other		\$4.24
	All bfasts		\$4.24
18[H]	On Call	Per Hour	\$1.71
		Per Day/Shift	\$17.47

## **SCHEDULE 3 - PANDEMIC LEAVE**

### Schedule X—Additional Measures During the COVID-19 Pandemic

X.1 Subject to clauses X.2.1(d) and X.2.2(c), Schedule X operates from 8 April 2020 until further or other order of the Commission in matter number AM2020/13. The period of operation can be extended on application.

X.2 During the operation of Schedule X, the following provisions apply:

#### X.2.1 Unpaid pandemic leave

(a) Subject to clauses X.2.1(b), (c) and (d), any employee is entitled to take up to 2 weeks' unpaid leave if the employee is required by government or medical authorities or on the advice of a medical practitioner to self-isolate and is consequently prevented from working, or is otherwise prevented from working by measures taken by government or medical authorities in response to the COVID-19 pandemic.

(b) The employee must give their employer notice of the taking of leave under clause X.2.1(a) and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).

(c) An employee who has given their employer notice of taking leave under clause X.2.1(a) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in clause X.2.1(a).

(d) A period of leave under clause X.2.1(a) must start before 29 March 2021, but may end after that date.

(e) Leave taken under clause X.2.1(a) does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this Enterprise Agreement and the NES.

NOTE:

The employer and employee may agree that the employee may take more than 2 weeks' unpaid pandemic leave.

#### X.2.2 Annual leave at half pay

(a) Instead of an employee taking paid annual leave on full pay, the employee and their employer may agree to the employee taking twice as much leave on half pay.

(b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.

(c) A period of leave under clause X.2.2(a) must start before 29 March 2021, but may end after that date.

EXAMPLE: Instead of an employee taking one week's annual leave on full pay, the employee and their employer may agree to the employee taking 2 weeks' annual leave on half pay.

In this example:

- the employee's pay for the 2 weeks' leave is the same as the pay the employee would have been entitled to for one week's leave on full pay (where one week's full pay includes leave loading under the Annual Leave clause of this Enterprise Agreement); and

- one week of leave is deducted from the employee's annual leave accrual.

NOTE 1:

A employee covered by this Enterprise Agreement who is entitled to the benefit of clause X.2.1 or X.2.2 has a workplace right under section 341(1)(a) of the Act.

NOTE 2:

Under section 340(1) of the Act, an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee

exercising a workplace right. Under section 342(1) of the Act, an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3:

Under section 343(1) of the Act, a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.

Schedule Y—Industry Specific Measures During the COVID-19 Pandemic

Y.1 Subject to clause Y.4.5, Schedule Y operates from 29 July 2020 until 29 March 2021. The period of operation can be extended on application.

Y.2 Schedule Y applies to employees engaged in the aged care industry.

Y.3 For the purposes of Schedule Y, the aged care industry means the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility.

Y.4 Paid pandemic leave

Y.4.1 Subject to clauses Y.4 to Y.4.9, an employee engaged in the aged care industry is entitled to take up to 2 weeks' paid pandemic leave on each occasion the employee is prevented from working (including working from home):

- (a) because the employee is required by government or medical authorities to self isolate or quarantine;
- (b) because the employee is required by their employer to self isolate or quarantine;
- (c) because the employee is required on the advice of a medical practitioner to self isolate or quarantine because they are displaying symptoms of COVID-19 or have come into contact with a person suspected of having contracted COVID-19;
- (d) because the employee is in isolation or quarantine while waiting for the results of a COVID-19 test; or
- (e) because of measures taken by government or medical authorities in response to the COVID-19 pandemic.

Y.4.2 Except where clause Y.4.1(b) applies, the employee must give their employer notice of the taking of leave under clause Y.4.1 and of the reason the employee requires the leave, as soon as practicable (which may be a time after the leave has started).

Y.4.3 An employee required on the advice of a medical practitioner to self isolate who has given their employer notice of taking leave under clause Y.4.2 must, if required by the employer, produce a medical certificate.

Y.4.4 Except where clauses Y.4.1(b) or Y.4.3 apply, an employee who has given their employer notice of taking leave under clause Y.4.2 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason given in clause Y.4.1.

Y.4.5 A period of leave under clause Y.4.1 must start before 29 March 2021, but may end after that date.

Y.4.6 An employee cannot take paid pandemic leave under clause Y.4.1 if the employee could instead take paid personal/carer's leave.



NOTE:

Personal/carer's leave is provided for in the NES. Section 97 of the Act sets out the circumstances in which an employee may take personal/carer's leave. An employee who is prevented from working for one of the reasons set out in Y.4.1 may not be entitled to take personal/carer's leave if they are not unfit for work because of a personal illness or injury.

Y.4.7 An employee cannot take paid pandemic leave under clause Y.4.1 if the employee becomes entitled to workers compensation benefits as a result of contracting COVID-19.

Y.4.8 An employee will not be entitled to paid pandemic leave unless the employee

- (a) has undertaken a COVID-19 test in connection with the applicable circumstance in clause Y.4.1; or
- (b) undertakes a COVID-19 test at the earliest opportunity.

Y.4.9 A casual employee is not entitled to leave under clause Y.4.1 unless engaged on a regular and systematic basis.

Y.4.10 Leave taken under clause Y.4.1 does not affect any other paid or unpaid leave entitlement of the employee and counts as service for the purposes of entitlements under this Enterprise Agreement and the NES.

Y.4.11 For a full-time employee, leave taken under clause Y.4.1 shall be paid at the employee's base rate of pay for the employee's ordinary hours of work in the period of the leave.

NOTE:

The base rate of pay has the meaning given in section 16 of the Act.

Y.4.12 For a part-time employee, pay for leave taken under clause Y.4.1 will be the greater of:

- (a) their agreed ordinary hours of work under clause 10.3(b); or
- (b) the average of their weekly ordinary hours of work for the previous 6 weeks.

Y.4.13 For a casual employee, pay for leave taken under clause Y.4.1 shall be calculated on the average weekly pay received by the employee in the previous 6 weeks, or where the employee has been employed for less than 6 weeks, for the duration of their employment.

NOTE 1:

An employee covered by this Enterprise Agreement who is entitled to the benefit of Schedule Y has a workplace right under section 341(1)(a) of the Act.

NOTE 2:

Under section 340(1) of the Act, an employer must not take adverse action against an employee because the employee has a workplace right, has or has not exercised a workplace right, or proposes or does not propose to exercise a workplace right, or to prevent the employee exercising a workplace right. Under section 342(1) of the Act, an employer takes adverse action against an employee if the employer dismisses the employee, injures the employee in his or her employment, alters the position of the employee to the employee's prejudice, or discriminates between the employee and other employees of the employer.

NOTE 3:

Under section 343(1) of the Act, a person must not organise or take, or threaten to organise or take, action against another person with intent to coerce the person to exercise or not exercise, or propose to exercise or not exercise, a workplace right, or to exercise or propose to exercise a workplace right in a particular way.



## **Medea Park Residential Care Enterprise Agreement 2020**

We have reviewed this information and provide the following undertakings in relation to the Medea Park Association Incorporated Nurses Agreement 2020:

- A. Medea Park Association Incorporated undertakes that Clause 21.7 - Calculation Of Overtime To Be Based On Agreement Rates, is to be read that where the wage rates under the Enterprise Agreement are less than the wage rate calculated with the casual loading in the Nurses Award, then the higher rate of pay will apply for the calculation of overtime.
- B. Medea Park Association Incorporated undertakes that Clause 21(9) - Time Off In Lieu Of Payment For Overtime, should be read as follows:  
  
"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. In addition, any Time Off In Lieu of Payment for Overtime applicable at termination of employment will be paid at the appropriate overtime rate."
- C. Medea Park Association Incorporated undertakes that within Clause 23(2) – Shift Workers, this should be varied to read that an employee will be determined as a Shift Worker if they regularly work on weekends or work at least 20 weekends.
- D. Medea Park Association Incorporated undertakes that where clause 34 – Redundancy, within the Medea Park Association Incorporated Nurses Agreement 2020, states a benefit which is less than the National Employment Standards, then the terms and conditions of the National Employment Standards will apply.

These undertakings are made by Deborah Austen, Chief Executive Officer of the Medea Park Association Incorporation.

Deborah Austen  
Chief Executive Officer

Dated 29<sup>th</sup> March 2021